TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 261.

THE GOAT AND SHEEPSKIN IMPORT COMPANY,
PETITIONER,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 20, 1906.
CERTIORARI AND RETURN FILED MAY 9, 1906.

(20,206.)

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a United States Circuit Court of Appeals for the Second Circuit.

(3641.)

THE GOAT AND SHEEPSKIN IMPORT COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

Transcript of Record.

Appeal from the Circuit Court of the United States for the Southern District of New York.

1 *Order.*

At a Stated Term of the United States Circuit Court for the Southern District of New York, held in the United States Court in the Post Office Building in the City of New York, Borough of Manhattan, on the — day of August, 1904.

Present: Hon. E. Henry Lacombe, Circuit Judge.

In the Matter of The Application of the GOAT & SHEEPSKIN IMPORT COMPANY for a Review of the Decision of the Board of United States General Appraisers upon Certain Merchandise Imported by said Company on the Vessels and Entered on the Dates Named in the Accompanying Schedule.

On reading and filing the petition of the Goat & Sheepskin Import Company, dated the 17th day of August, 1904, and on motion of Hatch, Keener & Clute, attorneys for the petitioners, it is

Ordered that the Board of United States General Ap-
2 praisers, sitting at the Port of New York, return to this Court the record and the evidence taken by them in the above matter, together with a certified statement of the facts involved in their decision thereon.

E. H. LACOMBE,
United States Circuit Judge.

Petition.

United States Circuit Court, Southern District of New York.

In the Matter of The Application of the GOAT & SHEEPSKIN IMPORT COMPANY for a Review of the Decision of the Board of United States General Appraisers upon Certain Merchandise Imported by said Company on the Vessels and Entered on the Date- Named in the Accompanying Schedule.

To the Circuit Court of the United States for the Southern District of New York:

The petition of the Goat & Sheepskin Import Company respectshows, and the said petitioners allege:

That the Goat & Sheepskin Import Company is a corporation organized under the laws of the State of New York, and doing business at No. 28 Spruce Street, in the City of New York.

3 That under such corporate name the said company imported and entered at the Port of New York certain merchandise, described in the schedule hereto annexed, at the times therein mentioned.

That thereafter the Collector at said port proceeded to ascertain, fix and liquidate the amount of duties to be paid on said merchandise under the provisions of an Act of Congress, entitled, "An Act to provide the revenue for the Government, and to encourage the industries of the United States," approved, and which took effect on the 24th day of July, 1897, and which rate and amount was in excess of the rate and amount required by law to be paid thereon under the said Act.

That your petitioners being dissatisfied with the decision of the said Collector as to the rate and amount so fixed, within ten days after, but not before said ascertainment and liquidation of duties, gave notice in writing to the Collector setting forth therein distinctly and specifically in respect to each entry and payment, the reasons for their objections thereto, and paid the full amount of the duties and charges ascertained to be due thereon.

That thereafter the said Collector transmitted the invoice and all papers and exhibits connected therewith to the Board of United States General Appraisers, who within the past thirty days, and on or about the 21st day of July, 1904, as set forth in the following schedule, returned that they had examined and decided as to the said entries, and affirmed the decision of the said Collector.

That your petitioners are dissatisfied with said decision of the said Board of Appraisers as to the construction of the law, and as to the facts respecting the classification of such merchandise, and the rate of duty imposed thereon under such classification, and that the following is a concise statement of the errors of law and fact complained of:

4 *Errors of Fact.*

First. The Board of United States General Appraisers erred in finding, directly or by implication, that the substance on the skins in question was wool, and in not finding on the contrary that it was hair.

Second. The Board erred in not finding that the evidence in this case was unanimous, uniform, undisputed and uncontroverted, that the substance on the skins in question consisted of hair, as distinguished from wool, both as a matter of fact, and according to trade and commercial uses.

Third. The Board erred in finding that the substance on the skins in question could be carded.

Fourth. The Board erred in holding, either directly or by implication, that the merchandise in question was of the same character as that which was the subject of G. A. 4593.

Errors of Law.

First. The Bord of United States General Appraisers erred in holding that the substance on the said skins was classifiable and dutiable as assessed at three cents per pound under the provisions of paragraphs 358 and 360 of the Tariff Act of July 24, 1897.

Second. The Board erred in not holding that the merchandise in controversy was entitled to free entry under the provisions of paragraph 664 of said act.

Third. The Board erred in not holding that the substance on the skins in question was free of duty under the provisions of Paragraph 571 of said act, if not entitled to free entry under the provisions of Paragraph 664 of said act.

Fourth. The Board erred in holding that the question involved was the same as that settled in G. A. 4593, and in considering the evidence in G. A. 4593.

Fifth. The Board erred in following and in not distinguishing G. A. 4593, and Lyon *vs.* Marine, 55 Fed. Rep., 964.

Sixth. The Board erred in overruling the protests and affirming the decision of the Collector, and in not sustaining the protests and reversing the decision of the Collector.

The following is a description of the importations embraced in this petition, namely:

SCHEDULE.

Description of merchandise.	Name of vessel.	Date of entry.	Protest number.	Date of decision.
Sheepskins with hair.	Manitou	Nov. 17/99,	66335 F 3024	July 21, 1904
" "	Beatrice	Mch. 29/00,	69511 F 7096	"
" "	Sempione	May 11/00,	71195 F 9294	"
" "	Archimede	June 27/00,	72879 F 10987	"
" "	Albazia	Aug. 2/00,	75331 F 13332	"
" "	Marquette	June 1/00,	76571 F 14006	"
" "	Mesaba	Sept. 18/00,	77590 F 15432	"
" "	Europe	Sept. 5/00,	77591 F 14534	"
" "	Laureldene	Aug. 8/00,	77760 F 14104	"
" "	Minneapolis	May 21/00,	77812 F 14811	"
" "	Belgravia	Oct. 5/00,	78420 F 16561	"
" "	Manitou	Nov. 8/00,	79038 F 17211	"
" "	Mesaba	Oct. 26/00,	79247 F 17210	"
" "	Graf Waldersee	Oct. 29/00,	79248 F 17212	"
" "	Mesaba	Nov. 27/00,	79982 F 18383	"
" "	Minnehaha	Dec. 19/01,	80850 F 761	"
7 " "	Patria	Dec. 31/00,	81428 F 1140	"
" "	Kaiser Wilhelm	Dec. 18/00,	82563 F 2570	"
" "	Pennsylvania	Dec. 26/00,	82779 F 2387	"
" "	Bulgaria	Feb. 9/01,	82780 F 2571	"
" "	Tartar Prince	Feb. 14/01,	83236 F 2778	"
" "	Hesperia	Mch. 13/01,	86542 F 6610	"
" "	Hudson	Mch. 21/01,	86543 F 6611	"
" "	Spartan Prince	Jan. 26/01,	87471 F 2050	"
" "	Marco Minghetti	May 28/01,	88131 F 8577	"
" "	Anchoria	Sept. 20/01,	92794 F 13956	"
" "	"	Oct. 28/01,	92795 F 13957	"
" "	Ethiopia	Nov. 14/01,	94891 F 15726	"
" "	Astoria	Jan. 9/02,	97084 F 1652	"

SCHEDULE—*Continued.*

	Description of merchandise.	Name of vessel.	Date of entry.	Protest number.	Date of decision.
	Sheepskins with hair.	Menominee.....	Nov. 27/01,	97501 F 2413	July 21, 1904.
	" "	. Mesaba.....	Apr. 29/01,	98643 F 6056	"
	" "	. Perugia.....	Mch. 6/02,	99595 F 4581	"
	" "	. Bolivia.....	Mch. 17/02,	45 H 4224	"
	" "	. Rhein.....	Mch. 19/02,	46 H 4225	"
	" "	. Grosser Kurfurst	Apr. 25/02,	935 H 5660	"
	" "	. Citta di Milano..	Apr. 14/02,	936 H 5661	"
	" "	. Anchoria.....	Apr. 16/02,	937 H 5809	"
8	" "	. Phœnicia.....	May 5/02,	2503 H 6662	"
	" "	. Furnessia.....	June 30/02,	2564 H 7350	"
	" "	. Columbia	June 25/02,	5274 H 10152	"
	" "	. Perugia.....	Aug. 23/02,	6929 H 12073	"
	" "	. Hesperia	Sept. 10/02,	8506 H 13482	"
	" "	. Anchoria.....	Sept. 24/02,	8898 H 13876	"
	" "	. Karamania.. . .	Oct 29/02,	8899 H 15016	"
	" "	. America.....	July 7/02,	10378 H 16408	"
	" "	. Minneapolis.....	Nov. 11/02,	11140 H 17214	"
	" "	. Roma	Nov. 11/02,	11141 H 17215	"
	" "	. Menominee.....	Oct 11/02,	11792 H 16409	"
	" "	. Verona.....	Oct. 18/02,	11793 H 16837	"
	" "	. Citta di Milano..	Nov. 2/02,	11794 H 16838	"
	" "	. Victoria.	Dec. 4/02,	14409 H 2139	"
	" "	. Citta di Milano..	Dec. 27/02,	14410 H 2140	"
	" "	. Hillglen.....	Dec. 13/02,	16552 H 3200	"
	" "	. Minnehaha.....	Nov. 26/02,	16553 H 4057	"
	" "	. Liguria.....	Jan. 5/03,	16914 H 2346	"
	" "	. Phœnicia.....	Mch. 17/03,	18590 H 8924	"
9	" "	. Germanic.	Apr. 10/03,	20737 H 10491	"
	" "	. Citta di Milano..	Apr. 18/03,	20738 H 10493	"
	" "	. Ravenna.	Feb. 9/03,	20830 H 5297	"
	" "	. Neckar..	Feb. 16/03,	20831 H 6346	"
	" "	. Sicilia.....	Feb. 6/03,	20832 H 7301	"
	" "	. Minnetonka	Apr. 3/03,	22502 H 10492	"
	" "	. Minneapolis.....	Apr. 10/03,	22503 H 11149	"
	" "	. Regina Elina...	Mch. 24/03,	22504 H 11151	"
	" "	. Minneapolis....	Apr. 10/03,	22505 H 11151	"
	" "	. Citta di Milano..	July 22/02,	24538 H 10746	"
	" "	. Umbria.... ...	June 18/03,	24539 H 14689	"
	" "	. Minneapolis....	Aug. 1/00,	25846 H 14105	"
	" "	. Hohenfels.	July 9/03,	25837 H 16470	"
	" "	. Anchoria.	June 15/03,	27089 H 16092	"
	" "	. Menominee ...	July 30/03,	28033 H 18822	"
	" "	. Germania.....	Aug. 20/03,	29986 H 20279	"
	" "	. Lombardia.....	Aug. 20/03,	29987 H 20760	"
	" "	. Liguria.....	Sept. 3/03,	101511 / 22200	"
	" "	. Princess Irene..	Sept. 10/03,	101512 / 23453	"
	" "	. Roma	Oct. 23/03,	109459 / 26471	"
	" "	. Minnehaha.....	Nov. 24/03,	111660 / 3200	"
10	" "	. Monvine.....	Dec. 16/03,	111611 / 3224	"
	" "	. Coastwise	Apr. 9/03,	113105 / 1982	"
	" "	. Carpathia.....	Jan. 7/04,	113106 / 5193	"
	" "	. Vincenzo Florio.	Dec. 24/03,	113112 / 4266	"
	" "	. Main.	Dec. 23/03,	113113 / 4267	"
	" "	"	Dec. 21/03,	113114 / 4285	"
	" "	. Vincenz › Florio.	Dec. 18/03,	113115 / 4286	"
	" "	. Prinz Oskar	Dec. 28/03,	113116 / 5010	"
	" "	. Lombardia	Jan. 22/04,	118195 / 6520	"
	" "	. Georgic	Jan. 28/04,	118196 / 7445	"
	" "	. Palatia....	Feb. 9/04,	118327 / 8141	"
	" "	. Citta di Torina.	Feb. 29/04,	120269 / 10020	"
	" "	. Prinzess Irene..	Feb. 26/04,	120270 / 10024	"
	" "	. Mesaba	Feb. 16/04,	120643 / 8858	"

11 Wherefore, your petitioners pray that the said Circuit Court review the questions of law and fact involved in the decision of the Board of United States General Appraisers heretofore made in the above matter as to the classification and rate of duty assessed upon the merchandise, and for that purpose that an order may be entered requiring said Board of General Appraisers to return to the said Circuit Court the record and evidence taken by them, together with a certified statement of facts involved in the case, and their decision thereon; and your petitioners pray for such additional orders and relief as they may be entitled to in the judgment of this Court, and pursuant to the statutes of the United States in such case made and provided.

Dated New York, August 17, 1904.

GOAT & SHEEPSKIN IMPORT CO.,
Petitioners,
By HATCH, KEENER & CLUTE,
Their Attorneys.

HATCH, KEENER & CLUTE,
Attorneys for Petitioners,
#100 *Broadway, Manhattan Borough, New York City.*

Endorsed: U. S. Circuit Court. Filed Aug. 19, 1904. Southern District New York. John A. Shields, Clerk.

Bond.

Know all men by these presents, that I Vincent P. Donihee, residing at No. 147 West Sixty-first Street, in the Borough of Manhattan, and City of New York, am held and firmly bound
12 unto the United States of America, in the sum of Fifty ($50) Dollars to be paid *in* the United States of America, for the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with my seal and dated the 18th day of August, in the year nineteen hundred and four.

VINCENT P. DONIHEE.

Whereas, the Goat & Sheepskin Import Company has applied to the Circuit Court of the United States, for the Southern District of New York, for a review of the questions of law and fact involved in a certain decision of the Board of United States General Appraisers, made on certain merchandise imported by it, and entered in its name, on the vessels and entered on the dates named in the foregoing schedule.

Now, therefore, the condition of this obligation is such that if the said the Goat & Sheepskin Import Company shall prosecute said proceeding with effect, and pay all damages and costs which shall be awarded against it therein if it fails to made said proceedings good,

then this obligation to be void, otherwise the same shall be and remain in full force and effect.

VINCENT P. DONIHEE.

Sealed and delivered and taken and acknowledged this 18th day of August, 1904, before me.

GEORGE S. LUDLOW,
[SEAL.] *Notary Public, New York County.*

13 UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Vincent P. Donihee, being duly sworn, says: that he resides in the Southern District of New York, in the Borough of Manhattan, and City of New York, and that he is worth the sum of One hundred ($100) dollars, over and above all his just debts and liabilities.

VINCENT P. DONIHEE.

Sworn to before me this 18th day of August, 1904.

GEORGE S. LUDLOW,
[SEAL.] *Notary Public, New York County.*

The within bond approved.

E. H. LACOMBE,
U. S. Circuit Judge.

Endorsed: U. S. Circuit Court. Filed Aug. 19, 1904. Southern District New York. John A. Shields, Clerk.

14 In the Circuit Court of the United States for the Southern District of New York.

John E. Dowsing, Chief Clerk Board of U. S. General Appraisers. [Seal.]

Suit No. 3641.

In the Matter of GOAT & SHEEPSKIN IMPORT COMPANY
v.
UNITED STATES, Being an Application for Review of a Decision of the Board of United States General Appraisers.

Return of the Board of United States General Appraisers to the Order of Hon. E. Henry Lacombe, Circuit Judge.

Dated NEW YORK, *Jan.* 6, 1905.

The Board of United States General Appraisers, sitting at New York, in response to the order of the Court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

The record consists of:

(1) Protest 66335-F, marked Exhibit A.

(2) The report of the Collector of Customs made in transmitting said protest, marked Exhibit B.

(3) The report of the United States Appraiser, marked Exhibit C.

15 (4) A copy of the testimony taken by the Board March 17, 1904, marked Exhibit D.

(5) A copy of the testimony taken by the Board July 7, 1904, marked Exhibit E.

(6) A copy of the decision of the Board, marked Exhibit F.

(7) A copy of G. A. 4593 (T. D., 21737) referred to in the decision of the Board, marked Exhibit G.

(8) The other protests mentioned in the importers' petition, together with the reports of the Collector and the local appraiser relative thereto, which are transmitted herewith in an envelope, marked Exhibit H.

The samples referred to in the testimony will be returned under separate cover.

16 EXHIBIT A.

S. 3641.

66335 F.

28 & 30 Spruce Street, Goat & Sheepskin Import Co., Limited.

Cable Address, "Goatcomp."

NEW YORK, *March 3rd,* 1900.

Hon. Geo. R. Bidwell, Collector, Port of New York.

SIR: We hereby protest against the liquidation of your Entry No. 185966, per S/S "Manitou" from London Nov. 18th '99; liqd. 27/2/1900

ACT #596/81
B G
" " 2094/2103
S G
" " 2060/1
H G
" " 2399/2402
H K
" " 2100/1
E S
" " 3166/9
H S
" " 3557/9
M S
" " 1119/24
O S
" " #2641
SHS
" " 20/1
G S—47 bales dry skins—claiming that

17 the assessment of duty at 3¢ per lb. on wool is erroneous.

These skins are commonly called Arabian hair sheep but their character in every way resembles the Goat more than the Sheep. The growth on them is not wool but absolutely hair, and the fiber has nothing common with wool and could not be sold for wool. We have imported these skins for the past 15 years and they have never been assessed for duty on wool or any other reason until the arrival of the above lot.

We claim that they are free of duty as skins of all kinds raw under Par. 664 Tariff Act of July 24/97.

Looking to you for a return of the excess, we are,

Yours respectfully,

GOAT & SHEEPSKIN IMPORT CO., L'T'D,
A. HELMRATH, *Sec't'y.*

Send all notices to Hatch, Keener & Clute, 100 Broadway, New York.

Endorsed: Custom House, New York, Mar. 7 1900 Received.

18 EXHIBIT B.

S. 3641.

66335 F.

Letter to General Appraiser Submitting Protest.

United States Customs Service, Port of New York.

COLLECTOR'S OFFICE, *Apr.* 11, 1900.

Board of U. S. Gen'l Oppraisers at the Port of New York.

GENTLEMEN: I submit the Protest of Goat & Sheepskin Import Co. #3024 against the assessment of duty as made by this Office on certain so called "Dry skins" imported by them in the "Manitou" Nov. 18/99. An inspection of the invoice and entry shows that no duty has been assesssed on the skins. The wool on the skins was returned by the Appraiser as "Wool, Class 2, Unwashed." Duty was assessed upon the number of pounds of wool as returned by the Appraiser, at the rate of 3¢ per pound, under the provisions of Par. 358 and 360, Act of July 24/97.

Reference is made to the special report of the U. S. Appraiser, herewith, dated Mch. 21, 1900, as to the character of the merchandise.

I have to report that the claimants have complied with the requirements of Section 14 of the Act of June 10, 1890, so far as lodging protest within the statutory time.

The Naval Officer concurs in the decision of this Office.

The Entry and invoice covered by the above protest are inclosed herewith.

Respectfully yours,

J. J. COUCH,
Special Deputy Collector.

(6 Inclosures.)

Endorsed: Received by Board of U. S. General Appraisers, Apr. 14 1900.

19 EXHIBIT C.

S. 3641.

66335-F.

Office of the Appraiser of Merchandise, Port of New York, N. Y.

MARCH 21, 1900.

Appraiser of Merchandise, District of New York.

SIR: Replying to protest No. 3024 of Goat & Sheepskin Import Company, Limited, against the assessment of duty at the rate of 3¢ per pound on certain merchandise imported by them ex "Manitou," November 17, 1899, invoice No. 13009, entry No. 185966, I have to report as follows:

The merchandise under protest consists of Arabian sheepskins with class 3 wool thereon, which was returned for duty at 3¢ per pound under Paragraphs 358 and 360, N. T., in accordance with T. D. 21737—G. A. 4593.

The rules prescribed for ascertaining quantity of wool on sheepskins do not (and is believed in this office could not) cover all kinds of skins. The quantity of wool returned on such skins as those here under consideration must be determined by the exercise of the examiner's experience and knowledge.

Papers are herewith returned.

Respectfully, L. B. CARHART,
Assistant Appraiser, Fifth Division.

20 EXHIBIT D.

S. 3641.

Before the Board of U. S. General Appraisers.

Mocha Sheepskin.

Board No. 1.

In the Matter of the Protests of GOAT AND SHEEPSKIN IMPORTING Co., Nos. 66335-F, 69511, 71195, 72879, 75331, 76571, 77590, 77591, 77760, 77812, 78420, 79038, 79247, 79248, 79982, 80850, 81428, 82563, 82779, 82780, 83236, 86542, 86543, 87471, 88131, 92794, 92795, 94891, 97094, 97501, 98643, 99595.

NEW YORK, *March* 17, 1904.

Before General Appraisers Lunt and McClelland.

Appearances.

Chas D. Lawrence, Esq., Ass't Counsel Treasury Dep't.
J. S. Tompkins, Esq., Counsel for the Importers.

21 A. HELMRATH, called as a witness on behalf of the Importers, being duly sworn, testified as follows:

66335-F to 99595-F, inclusive.

By Mr. TOMPKINS:

Q. Are you connected with the Goat and Sheepskin Importing Co., importers of the merchandise covered by these protests?
A. I am secretary of the company.
Q. Are you familiar with all of the importations in question?
A. Yes, sir.
Q. Have you samples which fairly and accurately represent the goods on which you have protested?
A. I have (witness produces samples).
Q. Did you examine this merchandise as it came in?
A. Yes, sir.
Q. Is it your business as secretary of the company to examine the merchandise?
A. I looked at it all, I suppose.
Q. Did you formally open the bales?
A. Yes, sir.
Q. Open them up?
A. Yes, sir.
Q. And examine them?
A. Yes, sir.
Q. From what bale did you take that sample? What importation?
A. I could not give the date of the importation. The skins are all alike. There is no difference between the different importations. There are a great number of cases, and it would have been very awkwark to bring samples from each importation.

22 By General Appraiser MCCLELLAND:

Q. You cannot say that these came out of any of the——
A. Yes, sir, I can say that.

By General Appraiser LUNT:

Q. Well, what one?
A. (No answer.)

By Mr. TOMPKINS:

Q. How long has your firm been importing this class of skins?
A. Since '92.
Q. Can you tell me in what year these particular skins here were imported?
A. At the end of last year.
Q. End of 1903?
A. Yes.

By General Appraiser LUNT:

Q. There is a difference in those skins that you put up before us here. The last one you have on top appears to be differently haired from the others?
A. Yes, sir.

Q. Can you tell from what bale you took that upper one, the one with the longest hair?

A. These three skins came from one bale. They are mixed together and in about this proportion, about one-third of each length of hair as is represented here.

By Mr. TOMPKINS:

Q. For one of the skins which you now show to the Board, did you endeavor to get one of the very longest haired skins that you could find?

A. Yes, sir. This is one of the longest haired skins that I could find.

23 Q. And how about the other two samples that you present?

A. The next one is a medium hair, and the next one is a short haired skin—one of the shortest haired skins.

By General Appraiser MCCLELLAND:

Q. You took those three out of the same bale, you say?

A. Out of the same bale.

Q. And yet you do not know what bale it was?

A. Well, I can get the number of the bale by referring to the office.

By General Appraiser LUNT:

Q. Do you know what importation it was? Here are those importations.

A. Well, I could get that very easily by referring to the office, but I haven't got it in mind.

By Mr. TOMPKINS:

Q. What is the basis for your statement that these three skins accurately represent all the merchandise? What is the basis of your knowledge?

A. We picked these skins out, and gave them to Mr. Kitching, asking him whether they fairly represented the skins that are covered by our protests, and Mr. Kitching agreed that they did.

The three skins above referred to offered and received in evidence as Exhibits 1, 2 and 3, Protests 66335-F, &c. Exhibit 1 represents the long hair, Exhibit 2 the medium and Exhibit 3 the short hair.

Q. Do you know whether you have been required to pay duty on the hair on skins like Exhibit 2 and 3 as well as on the hair on Exhibit 1?

24 A. I believe we are required to pay duty only on the hair on Exhibit 1.

Q. So that Exhibit 1 really represents the merchandise in controversy in this case?

A. I believe so.

Q. Where do these skins come from?

A. Come from Hodeidah, Arabia.

Q. What are they known as?
A. They are known as mocha whitehead sheep.
Q. How long have they been so known?
A. I believe for twenty years or more.
Q. Are these whiteheads one variety of mocha sheep?
A. Yes.
Q. So that Exhibits 1 to 3 are whitehead sheepskins?
A. Yes.
Q. Are these three exhibits in the same condition as the condition in which you receive them and as imported?
A. Yes.
Q. What is the price of Exhibit 1 abroad?
A. The price varies according to the weight of the skin. I do not know just what the weight of this skin (Exhibit 1) would be.
Q. Is the price regulated or influenced by the quantity of hair on the skin?
A. None at all.

By General Appraiser LUNT:

Q. Don't it affect the weight?
A. The more hair there is on a skin the less money it will bring per weight.

By Mr. TOMPKINS:

Q. How do you account for that?
A. The more hair the poorer the skin.
25 Q. To whom do you sell the merchandise whitehead sheepskins like Exhibit 1?
A. We sell them to tanners of glove leather and of shoe leather.
Q. Do you sell the merchandise in the same condition as that in which it arrives in this country?
A. Yes, sir.
Q. Do you sell solely to tanners, or do you sell to others also?
A. We might sell them to speculator or dealer but he would sell them again to the tanners.

By General Appraiser MCCLELLAND:

Q. That is not the question what you might do; what do you do is the question he asked you.
A. Occasionally we sell them to a dealer in skins.

By Mr. TOMPKINS:

Q. Is it or is it not true that for many years prior to 1899 no duty was levied on the hair of whitehead sheepskins like Exhibit 1?
A. That is the fact.
Q. So the Government practice has changed in or about 1899?
A. Yes, sir.
Q. How was the substance of these skins like Exhibit 1 known in trade and commerce in this country on and prior to July 24, 1897?
A. I am not a dealer in wool and hair, so I could not answer this question from my knowledge.

Q. Do you know of your own knowledge whether the substance on those skins like Exhibit 1 is used as wool?
A. I do not know.

By Mr. LAWRENCE:

Q. Mr. Helmrath, referring to these exhibits which you have offered, do they come indiscriminately mixed in the bales of various grades?
26 A. What do you mean by grades?
Q. I understood you to say that these represented three grades, did you not?
A. No. What I meant to say is that they represent three lengths of hair.
Q. Well, those skins which contain three lengths of hair come indiscriminately mixed, do they not, in the bales?
A. Yes, sir.
Q. And is there any way by which you can designate the amount of each kind in those various bales?
A. I never have paid any attention to it. All I know about it is the amount of wool that Mr. Kitching returns as dutiable.
Q. For what principal purposes do you say you sold the hair on those skins?
A. I do not sell the hair.
Q. Do you know for what purposes they are used—the hairs?
A. Do I know?
Q. Yes.
A. I do not know.
Q. To what concerns do you sell them?
A. We sell them to tanners of shoe leather and glove leather.
Q. Do you sell them to any manufacturers of saddlery?
A. No, sir.

By General Appraiser MCCLELLAND:

Q. Did you take these three samples from the bale yourself?
A. Yes, sir.
Q. Why did you make the selection of the long, medium and short hair?
A. I meant to give as accurate a sample of the skins as they run as I could conscientiously do.
Q. Did you make an investigation before you concluded to
27 bring these three samples as to which of them had been assessed for duty?
A. I have been familiar with the matter since 1899 and I have seen every return of every invoice and I had fair knowledge of what skins Mr. Kitching returned as dutiable.
Q. Are you able to say that wool duty was assessed on any one of these three samples, or that is was not assessed on all three?
A. All I know about that question is what Mr. Kitching has told us, and that is that wool would be assessed on Exhibit 1 and not Exhibits 2 and 3.
Q. That you learned since you went on the witness stand to-day, didn't you?

A. No, sir; I have been familiar with that for some years.
Q. Did you submit these three samples to Mr. Kitching before you produced them here on the witness stand?
A. Yes, sir.
Q. And did you consult with him as to which of the three he had assessed for wool?
A. No, sir; I sent a clerk with the three samples to Mr. Kitching, and I did not see him personally at all. Mr. Kitching's word——
Q. Will you tell me why you brought the two that are marked there Exhibits 2 and 3?
A. Because I wished to represent the skins as they run as we receive them .
Q. Did you know at the time you selected them from the bale that they had not been assessed for duty for wool too?
A. I presumed that they had not.
Q. You simply presumed it?
A. (No answer.)
Q. Do you know how many skins there were in the bale that you picked these samples from that were of the same grade as Exhibit 1?
A. No, I couldn't give you any accurate——
28 Q. Or how many of the other grades, 2 and 3?
A. No, I couldn't give you any figures.

By General Appraiser LUNT:

Q. Did you make this examination of that bale alone?
A. No, sir; there is a gentleman here who examined the bales with me.
Q. But your examination was only devoted to picking out these particular skins?
A. Yes, sir.
Q. And exhibits to show what Mr. Kitching——
A. Yes, sir.

By General Appraiser MCCLELLAND:

Q. Do you know as a fact that Exhibit 1 was assessed for wool duty?
A. I was not present.
Q. I am not asking what you suppose; I am asking if you know?
A. I do not know; I was not present when they were looked over. I do not know what Mr. Kitching thought about that.

By Mr. TOMPKINS:

Q. Is it a fact that you have been compelled to pay duty on the hair on mocha whitehead sheepskins covered by these protests?
A. Yes, sir; we have to pay duty.

29 AMMON P. SOULS, called as a witness on behalf of the Importers, being duly sworn, testified as follows:

By Mr. TOMPKINS:

Q. What is your business?
A. We are in the hair and wool business.

Q. How long have you been engaged in that business?
A. Eleven or twelve years.
Q. Do you handle skins like Exhibit 1?
A. No, sir.
Q. Do you purchase from Mr. Helmrath, who has just testified, the hair of whitehead sheepskin?
A. No; we buy it from tanners.
Q. Will you look at Exhibit 1 and state whether or not you deal in an article like the substance on that skin?
A. (Witness examining Exhibit 1.) Yes, we do; we handle a great deal of it.
Q. What is it?
A. Mocha hair.
Q. How long have you handled it?
A. Why, ever since I have been with the concern, eleven or twelve years. They have handled it before that.
Q. Under what name do you buy it?
A. Mocha hair.
Q. Under what name do you sell it?
A. Either as mocha hair or as hair.
Q. How long has that been true?
A. Well, to my knowledge eleven or twelve years.
Q. You say you handle wool also?
A. Oh, yes.
Q. Isn't hair like that on Exhibit 1 sometimes bought and sold as wool?
A. No.
Q. Is it used in trade and commerce as wool?
A. No.
Q. Never has been?
A. Not to my knowledge.
Q. Can it not be used as wool?
A. Why no; it is hair.
Q. Please explain why it cannot be used as wool?
A. Why, it is a hair; it has not the wool fibre at all.
Q. Is your business as a hair and wool dealer confined to this locality alone, New York City?
A. No, no, we sell all over the country.
Q. And is that trade designation hair that you have spoken of definite, general and uniform, or not?
A. That is the general term all over.
Q. There was no difference on and prior to July 24, 1897, from the present practice?
A. Oh, no.
Q. Please explain what the differences are between hair and wool, commercially speaking.
A. Well, hair is a smooth fibre, and wool you will find will be a barbed fibre.

By General Appraiser McCLELLAND:

Q. To what extent have you used and for what purposes this so-called mocha hair?

A. Why, we have handled car after car of it; a great deal of it.

By General Appraiser LUNT:

Q. To whom do you sell?
A. Stuffing manufacturers.
Q. Is it used anywhere in any mills to spin?
A. Why, it has been tried, but very little.
Q. Is it used sometimes by carpet manufacturers?
A. Well, it may, in a small way.
Q. Where have you sold any of it to any manufacturers?
31 A. Well, I don't know.
Q. Can't you name any?
A. I don't know as we would care to tell our customers. My competitors are right here.

Counsel for the importers objects to the question as being irrelevant and immaterial, but has no objection to the Board asking what those manufacturers make to whom the witness sold.
Objection overruled. Exception.

A. E. L. McLain Mfg. Co.

By General Appraiser MCCLELLAND:

Q. What is their business?
A. Manufacturers of sweat pads for horses.

By General Appraiser LUNT:

Q. Who else?

Counsel for importers requests that other witnesses be required to leave the room during this testimony.
Request refused by the Board, on the ground that the matter is not of sufficient importance.

By General Appraiser LUNT:

Q. What other manufacturers of other classes of goods do you sell to?
A. We have sold it to bed manufacturers.
Q. Used for stuffing purposes?
A. Yes.
Q. Do you sell any to manufacturers who spin yarn?
A. I can't recall any now.

32 By Mr. LAWRENCE:

Q. Does this hair possess any wool-y characteristics?
A. I don't know of any.
Q. Do you know if it can be carded?
A. Oh, yes, it can be carded.
Q. It can be?
A. Oh, yes; card most anything.
Q. Well, I mean it is susceptible of being carded and made into yarn, is it not?
A. I think it can be made into yarn, yes.

Q. Do you know whether it ever has been?
A. I think it has been tried; couldn't be used alone anyway; couldn't spin it alone.

CHARLES L. KLAUDER, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. TOMPKINS:

Q. What is your occupation?
A. I am a tanner.
Q. How long have you been a tanner?
A. About seven years.
Q. Your place of business is where?
A. Philadelphia.
Q. Do you, in the course of your business, handle merchandise like Exhibit 1?
A. I do.
Q. Have you bought whitehead mocha sheepskins like Exhibit 1 from the Goat and Sheepskin Importing Co.?
A. I have.
Q. For how long?
A. For about six years.
33 Q. What do you do with skins like Exhibit 1 after you purchase them?
A. We soak them, put them in lime about two weeks, and then take the hair off them after we take them from the lime.
Q. What do you do with the hair after taking it off?
A. We wash the lime out of it, dry it and sell it to dealers.
Q. Under what name do you sell it?
A. Hair.
Q. How long have you sold it as hair?
A. From the beginning—for six years, for about six years.
Q. Has it ever been sold by you as wool?
A. No, never.
Q. Have you ever handled wool by itself?
A. Oh, yes.
Q. To what extent?
A. To a large extent. I was in the dyeing business previously.
Q. During what period were you in the wool dyeing business?
A. Twenty years.
Q. Can you give the dates—from what year to what year?
A. Yes; I started on December 1, 1878, and stopped in March—I don't know the date—1899.
Q. While in the wool dyeing business did you handle all sorts and varieties of wool?
A. Principally the finer wools.

By General Appraiser LUNT:

Q. Did you handle wool or did you handle yarns?
A. Yarns.
Q. Not wool?
A. Not wool; not raw wool.

34 By Mr. TOMPKINS:

Q. To what class of merchants or dealers do you sell the substance on skins like Exhibit 1?

A. To hair dealers.

Q. Exclusively?

A. To hair and wool dealers.

Q. Do wool dealers handle hair as well as wool?

A. To my knowledge.

Q. To your knowledge they do or do not?

A. They do, they handle both wool and hair.

Q. What is the basis of your knowledge on that?

A. I sell them wool that I take from skins as well as the hair, to the same dealers.

Q. So that from certain skins you obtain wool and from other skins you obtain hair, is that correct?

A. That is correct; and sell to the same dealers.

Q. Do you not sometimes sell the substance on mocha sheepskins like Exhibit 1 as wool as distinguished from hair?

Q. No, I always sell it as hair; I couldn't sell it as wool.

Q. Why not?

A. Because they would not buy it as wool; they would tell me it wasn't wool; they would contradict me and say it is hair.

Q. You say you sell some merchandise as wool and other merchandise as hair—what is the distinction?

A. Only distinction I know is from the feel and from the appearance of it.

Q. State what conclusions you draw from the feel and appearance of the substance on Exhibit 1?

By General Appraiser MCCLELLAND:

Q. To what extent have you handled raw wool?

A. Only as a tanner.

35 Q. Have you handled raw wool pelts to any extent?

A. To the extent of taking it off the pelts, washing it and selling it.

Q. (Mr. Tompkins' last question read to witness by stenographer.)

A. Coarse, stubby, bristlelike I would call hair. Soft, pliable, curly I would call wool.

By General Appraiser LUNT:

Q. Look at the wool up here at the neck (Exhibit 1); examine the skin and just feel of the belly.

A. (Witness examining.) I would call that hair all over that skin.

By General Appraiser MCCLELLAND:

Q. Everything found on that skin you call hair?

A. Yes.

By Mr. TOMPKINS:

Q. It has none of the appearance of wool?

A. None whatever.

Q. Has it any of the feel of wool as distinguished from hair?
A. Not in the least.

By General Appraiser McCLELLAND:

Q. Did I understand you to say that you had sold hair similar to that you say you found on Exhibit 1 to hair and wool dealers?
A. Yes, sir.
Q. For what purpose did you sell it to wool dealers?
A. I don't know really what they did with it after they bought it from me.
Q. Were they manufacturers?
A. No. I sold it generally to dealers. I do not remember
36 ever selling any of this to manufacturers, although I have sold hair and wool to manufacturers; that is, goat hair.
Q. You don't remember having sold hair similar to this?
A. To manfacturers, no, I have not any recollection that I ever did.
Q. Sold to jobbers?
A. To dealers, yes, jobbers or dealers.
Q. You do not know for what purpose it was used after leaving your hands?
A. No.

By General Appraiser LUNT:

Q. I understand this to be sheepskin?
A. Oh, yes; I buy it for sheepskin.
Q. Call it mocha sheep?
A. Whitehead mocha sheep, that is what it is called.
Q. Are you familiar with East India sheep?
A. Yes, sir.

By Mr. TOMPKINS:

Q. Do you find any of those with coarse fibre on?
A. Yes, sir.
Q. Similar to this?
A. Well, worse than that—shorter and stubbier.
Q. Do you find any sheepskins with a similar fibre to this where the sheep are grown in other countries?
A. No, I don't think I have seen any.
Q. Is this sort of cost to sheepskins found largely in sheep grown in hot countries?
A. Yes, sir.
Q. Their coating instead of being fine is coarse and hairy?
A. Yes, sir.
37 Q. Do you buy the mocha sheepskins for the pelt or for the hair?
A. I buy them solely for the pelt—to manufacture leather out of the pelt.
Q. Do you buy as much for short haired mocha sheepskins as for the longer haired ones?
A. We buy about the same.

Q. Which, if either, do you prefer to buy—the short haired or the longer haired ones?

A. The short haired.

Q. What do you get for the hair, after you wash it and take it off the skin?

A. Three to five cents per pound according to the length of the hair and the color of the hair.

Q. That is what it sells for at wholesale?

A. Yes, about the price.

Q. Does or does not the hair lose in weight in the process through which you put it?

A. It loses in the process of liming and also in washing; it loses in weight.

Q. How much does it lose in weight?

A. Ten to fifteen per cent. in both processes, about ten to fifteen per cent.

Q. What is the value of the labor that you put upon this hair of the mocha sheepskin per pound?

A. The labor is in excess of what we get for the hair. The labor in taking the hair off the skin and washing it and drying it does not pay for the labor to take it off and handle it—the price we get for the hair does not pay for the labor.

E. S. PARKHURST, called as a witness on behalf of the Importers, being duly sworn, testified as follows:

By Mr. TOMPKINS:

Q. What is your business, Mr. Parkhurst?

A. Dealer in hair and wool and also wool puller.

Q. What is the style of your firm?

38 A. The D. M. Smith Company.

Q. Where is your place of business?

A. Gloversville, New York.

Q. Does your firm handle extensively a hair like that in Exhibit 1?

A. (Examining Exhibit 1) Yes, sir.

Q. About how much of the mocha hair in this country is handled by your firm?

A. Why, I couldn't say exactly, except that I know that a large part of the mocha skins that are imported in this country are used in the manufacture of glove leather; all that stock that is manufactured in glove leather practically it is done by us.

Q. About how large a part?

A. About, I should say, seventy-five to ninety per cent., roughly.

Q. How long have you so handled it?

A. Nineteen years.

Q. Under what name or names do you buy it and sell it?

A. Buy it as mocha hair and sell it as mocha hair.

Q. Has that always been true?

A. Yes.

Q. During your business experience?
A. Yes.
Q. Your experience has lasted how long?
A. Nineteen years this summer.
Q. Do you handle also wool?
A. Yes, sir.
Q. How, if at all, does the substance on the skin, Exhibit 1, differ from wool?
A. Oh, simply in the matter of the fibre. Wool fibre you can pull it apart and it pulls together; has a different feeling and different action entirely; can be spun alone while hair can't.
Q. How about the substance on the skin, Exhibit 1; is that hair or wool? Can that be spun alone?
39 A. (Examining exhibit.) I should say that it was hair.
Q. What leads you to state that it is hair?
A. Simply because it is that sort of fibre and got none of the qualities of wool.
Q. Hasn't it the feel of wool?
A. No, not at all.
Q. Doesn't it have the appearance of wool?
A. No, sir.
Q. What do you use the mocha hair for?
A. We buy it and sell it for further purposes—whatever it can be used for.
Q. Well, what is it used for?
A. Largely, for stuffing purposes.
Q. How largely?
A. Well, practically all that we sell is being sold for that purpose.
Q. Can it be used by itself for spinning purposes?
A. No, sir.
Q. Why not?
A. Because it would not hold together, to make into a yarn.
Q. Do you know if experiments have been made to use it for spinning purposes?
A. Why, I think they have. I think some of it has been used for spinning purposes with other stock to make into yarn. It has never been used successfully for that purpose, to my knowledge.
Q. You say that practically all that you handle is sold for stuffing purposes?
A. Practically all of it, I think.
Q. And never has been bought or sold at wholesale by you under any name other than mocha hair?
A. No, sir.
Q. Is your business confined to this locality, or is it general throughout the country?
A. General throughout the country.
Q. And is that trade nomenclature definite and uniform
40 throughout the United States, or is it partial, local and personal?
A. Never knew it to be called anything else.

Q. Than?
A. Mocha hair.

By Mr. LAWRENCE:

Q. Mr. Parkhurst, do you import these identical goods in large quantities?
A. Don't import them at all.
Q. How have you become familiar with them?
A. Through buying the stock after it has been taken off the skin by the tanners.
Q. You buy merely the leather then?
A. No, we buy the hair.
Q. And don't buy the leather?
A. No, sir.
Q. How do you know that this hair which you get is the hair from the mocha sheep?
A. From seeing it taken off the skins.
Q. By what other names have you ever known it to be called except mocha hair?
A. Never knew it to be called anything else.
Q. Always invoiced, bought and sold by that name?
A. Yes, sir.

By General Appraiser MCCLELLAND:

Q. Do you buy the skins?
A. Yes, sir.
Q. Same as that one before us, or just the hair or wool?
A. Just the hair or wool as it comes off the skin.
Q. Then you are not able to say whether any of these mocha sheep skins have wool on them?
A. I never really see the stock from the tanners. I never knew them to be—I never knew any wool to be pulled from mocha sheep.
41 Q. As I understand, your firm doesn't handle it after pulling?
A. No, sir.
Q. You buy the hair?
A. Yes.
Q. After it is taken from the skin?
A. Yes, sir; everything, get it all that is taken off.
Q. To what different concerns do you sell it after you have pulled it?
A. We sell it to stuffing manufacturers and dealers.
Q. What is the nature of the business of those stuffing manufacturers?
A. They are manufacturers of sweat pads for the saddlery trade, also manufacturers of stuffing goods and dealers.

LAZARUS SIMON, called as a witness on behalf of the Importers, being duly sworn testified as follows:

By Mr. TOMPKINS:

Q. What is your business, Mr. Simon?
A. Wool dealer.
Q. How long have you been engaged in that business?
A. About thirty-five years—forty.
Q. Where?
A. In Germany and in America.
Q. How long in America?
A. About thirty years.
Q. In the course of your business as a wool dealer have you handled merchandise like Exhibit 1?
A. Yes, sir (witness examining exhibit).
42 Q. Please state what the substance on the skin Exhibit 1 is?
A. (Witness examining exhibit). It is hair.
Q. All of it?
A. Yes, sir.

By General Appraiser MCCLELLAND:

Q. Have you dealt in such skins as Exhibit 1?
A. Yes, sir.
Q. That is the condition in which you see it?
A. Yes, sir.

By Mr. TOMPKINS:

Q. Wholesale?
A. I have taken the hair off such skins.
Q. Have you dealt in them wholesale?
A. Not exactly; I occasionally work some. I bought them of a hide man—bought a lot, got cheap enough, took the wool off and sold it.
Q. To whom do you sell merchandise like Exhibit 1?
A. Sell to dealers.
Q. To jobbers, you mean?
A. Jobbers, yes, sir; hair jobbers or wool.
Q. How, if at all, does the substance on the skin Exhibit 1 differ from wool?
A. Wool has a curly fibre and will adhere to each other. This here will separate as you shake it out—will not adhere—that is a hair—and it is all each single state and separate fibre.
Q. Have you ever in the course of your business sold an article like the substance on the skin Exhibit 1 as wool?
A. No, sir.
Q. Always sold it as hair?
A. Yes, sir.
Q. Ever known it to be bought or sold at wholesale in
43 this country under any name other than hair or mocha hair?

A. Mocha hair, hair, mocha hair, that is all what they call it.
Q. Are those the only names under which it is bought or sold?
A. Yes, sir.

By Mr. LAWRENCE:

Q. Are you thoroughly familiar with mocha sheepskins?
A. Yes, sir, I know something about it.
Q. Is that wool, or so-called hair, on them of various qualities?
A. May be short or long.
Q. Have you ever seen any wool or hair on the skin of a mocha sheep which more closely resembles wool than the article before you?
A. No, sir.
Q. You handle this article personally—mocha skins?
A. Yes, sir.
Q. With whom are your dealings mostly? What kind of dealers?
A. What you mean? Hair dealers or wool dealers?
Q. You deal with both hair dealers and wool dealers?
A. Yes. They mostly, the people in the wool business are also in the hair business; sell and buy hair; that is the way.
Q. You handle mocha sheepskins to a large extent?
A. No, not to a large extent. I did occasionally handle mocha skins.
Q. And to what kind of dealers did you dispose of the mocha sheepskins?
A. Wool and hair dealers.
44 Q. Do you know to what purposes they put the article?
A. No, I don't care about that; I couldn't tell the purposes.
Q. Do you think that the fibre of the hair, or wool, Exhibit 1 is capable of being spun?
A. No, sir.
Q. For what reason?
A. Because it would not adhere like wool. If you draw out the wool, it will adhere, each single fibre will adhere. But here you cannot; if you pull the fibres, they will not adhere to each other. So I cannot think you can spin it.
Q. Do you know if it can be combined with other fibres and then be spun?
A. Never heard of it. Such stock they always tell me is going to be used for filling purposes.

By General Appraiser MCCLELLAND:

Q. The question is not what they tell you, but what you know?
A. I do not know anything about that.
Q. Have you handled mocha sheepskins to any great extent?
A. Quite some occasionally.
Q. You don't import any, as I understand it?
A. No, sir.
Q. You buy them here?
A. Buy them here from importers.

Q. Did you ever find a mocha sheepskin that had any wool on it?
A. Never.
Q. When you remove the hair or wool, you sell it just as it comes off the skin?
A. Yes, sir.
Q. You do not make any attempt to separate or to test whether there is any wool in the hair?
45 A. Do not find any use for it, because there is no wool.
Q. Answer my question: You make no effort to separate the substance—whatever it may be—you make no attempt to determine whether it contains any wool, do you?
A. No, sir.
Q. You simply sell it as it comes from the skin?
A. Yes, sir.
Q. And you sell it both to wool and hair dealers, you say?
A. Yes, sir.

ROBERT N. KITCHING, called as a witness on behalf of the Importers, being duly sworn, testified as follows:

By Mr. TOMPKINS:

Q. What is your business, Mr. Kitching?
A. Examiner of wool fibres, and so forth, and skins.
Q. At the port of New York?
A. Yes, sir.
Q. How long have you held that position?
A. About 15 years.
Q. Will you look at Exhibit 1 and state whether or not that fairly represents the mocha sheepskin passed on by you?
A. Yes, sir (witness examining skin).
Q. Is it true that skins like Exhibit 1 were formerly returned by you free, the hair as well as the skin?
A. It was when I first came.
Q. Up to what time?
A. I do not remember the time exactly.
Q. What led you to the change in practice of assessing duty on the substance on skins like Exhibit 1?

46 General Appraiser McClelland excludes the question. Exception allowed.

Q. If the substance like that on the skin Exhibit 1 were on a goat, how would it be returned by you as examiner?
A. Hair of the goat.
Q. Free?
A. Free.
Q. What is the distinction between hair and wool?
A. Oh, there is quite a distinction. Depends on what kind of wool it is. Wool can be run down, deteriorate, to such a condition as this in (pointing to Ex. 1).
Q. Isn't the substance on the skin Exhibit 1 more in the nature of hair than in the nature of wool?

A. It is dead hair mostly, what they call dead hair or kemp.

Q. Can the substance on this skin Exhibit 1 be carded?

A. Yes, can card it, but would not be much left after get through carding it.

Q. You mean it is not commercially suitable for——

A. Drop under the card most.

Q. It isn't commercially suitable for carding?

A. No, sir; not commercially suitable. They can mix it with wool and card it.

By Mr. LAWRENCE:

Q. Are you familiar with all kinds of sheepskins imported here?

A. Practically so.

Q. And you frequently examine and pass upon mocha sheepskins?

A. Yes, sir.

Q. Referring to Exhibit 1 before you, how would you return that article for classification?

A. I would return such as that as wool, sir.

47 Q. Mocha sheepskin with the wool on?

A. Yes, sir.

By General Appraiser MCCLELLAND:

Q. On a skin similar to this Exhibit 1, how do you make your return? What percentage is wool?

A. About ten per cent. Sometimes can be a little higher, according to the sheep, according to the skin.

Q. According to the skin?

A. According to the amount of what I consider wool on the skin.

Q. Is that percentage arrived at because you find wool, or because you do not find wool?

A. Because I find this here which I call wool.

Q. You say it varies in per cent.?

A. Yes, sir.

Q. And when you say that 15 per cent. of it is wool, that means that the other 85 per cent. of it is hair?

A. No, no. I mean when I return a skin for wool, I estimate that it is covered over with wool on the skin.

Q. All the wool on the skin?

A. Yes, on that skin. I examine the skins and throw out the skins that are, I consider dutiable when there is enough wool to call it dutiable. The rest of the skins go out as not dutiable.

Q. Because they have no wool on?

A. Because they are wool like that—short.

Q. Like Exhibit 3?

A. Yes; couldn't be made anything out of that nohow; might possibly make some use of that.

Q. Make some use, you mean, as wool?

A. Well, I do not know whether use it for wool or not; might work it with wool, if they had something to work with it, to hold it, so they got it through the machinery.

Counsel for the Government asks ten days for brief.

48 EXHIBIT E.

S. 3641.

Before the Board of U. S. General Appraisers.

Mocha Sheepskins.

In the Matter of the Protests of GOAT AND SHEEPSKIN IMPORT CO., LTD., 120643, 109459, 120269/70, 113112/16, 113105/6, 111660/1, 118195/6, and 118327.

NEW YORK, *July* 7, 1904.

Before General Appraiser McClelland.

Appearances.

C. D. Lawrence, Esq., Ass't Counsel Treasury Dep't.
J. S. Tompkins, Esq., Counsel for Importers.

A. HELMRATH, called as a witness on behalf of the Importers, being duly sworn, testified as follows:

By Mr. TOMPKINS:

Q. What is your connection with the Goat and Sheepskin Import Company?

A. I am secretary of the company.

49 Q. Are you familiar with all of the importations of the Goat and Sheepskin Import Co.?

A. Yes, sir.

Q. You handle the invoices?

A. Yes, sir. I handle the invoices and I look at the skins, look at the goods.

Q. Do you recall having testified on the hearing of the protests of the Goat and Sheepskin Import Co., 66335-F, &c., on March 17th last?

A. Yes, sir.

Q. Have you examined all of the invoices covered by these protests 120643, &c.?

A. Yes, sir.

Q. Will you please state how the merchandise covered by these protests which are up for hearing to-day compares with the merchandise about which you previously testified and which was the subject of the protests of the Goat and Sheepskin Import Co., 66335-F, &c.?

A. They are identical—in kind, I suppose I should say.

Q. What is the article, or the merchandise covered by the protests?

A. They are mocha hair sheepskins.

Counsel for the importers states that he submits these protests upon

the records and upon the testimony and records connected with the protests upon the records with the protests of the Goat and Sheepskin Import Company, 66335-F, &c.

By Mr. LAWRENCE:

Q. You examined all these invoices, have you?
A. Yes, sir, I looked at them.
Q. All from the same parties?
A. They are all from the same party with the exception of one.
50 Q. And they are known as what—these sheep from which the skins come?
A. As mocha sheep.
Q. Any particular breed?
A. Called mocha whitehead sheep.

EXHIBIT F.

S. 3641.

United States General Appraisers.

Before Board 1.

In the Matter of Protest 66335-F, etc., of GOAT & SHEEPSKIN IMPORT COMPANY Against the Assessment of Duty by the Collector of Customs at the Port of New York, N. Y.

NEW YORK, *July* 21, 1904.

McClelland, General Appraiser:

The merchandise is skins of the mocha sheep returned by the Appraiser for duty only on the basis of the wool found thereon. Said wool was assessed for duty by the Collector as wool, class three, at three cents per pound, under the provisions of paragraphs 358 and 360 of the Tariff Act of 1897. Claims for free entry are made under the provisions of paragraphs 562, 571 and 664 of said act.

The testimony taken on the hearing before the Board on these protests shows that the question involved is the same as that
51 settled in G. A. 4593 (T. D., 21737) and an unpublished decision dated January 31, 1900 (Protest 48188-F, etc.), the latter of which was affirmed upon appeal by the United States Circuit Court for the Southern District of New York, May 27, 1904, in The Abe Stein Company *v.* United States (no opinion filed).

On the hearing in G. A., 4593 (*supra*) there was evidence that the article found on this class of skins—whether called hair or wool—could be carded, and this is substantially confirmed by the testimony of the Examiner (Kitching) in the case before us.

Following the rulings in the cases above cited, and upon the au-

thority of Lyon *et al. v.* Marine (55 Fed. Rep., 964), the protests are overruled and the decisions of the Collector affirmed.

(Signed) W. F. LUNT,
T. S. SHARRETTS,
C. P. McCLELLAND,
Board of U. S. General Appraisers.

EXHIBIT G.

S. 3641.

(21737—G. A. 4593.)

Mocha Sheepskins with the Wool On.

A cheap grade of mixed hair and wool, the product of the Mocha sheep, imported on the skins, is not free of duty under paragraph 664, tariff act of 1897, providing for "skins of all kinds, raw (except sheepskins with the wool on)," but is duitable at 3 cents per
52 pound, under paragraphs 358 and 360 of said act, as wool, class 3. Said merchandise is excepted *eo nomine* from paragraph 664, the skins bearing the wool in question being "sheepskins with wool on," within its terms—Lyon *v.* Marine (55 Fed. Rep., 964), followed.

Before the U. S. General Appraisers at New York.

NOVEMBER 6, 1899.

In the Matter of the Protest, 52496*f*-9233, of LITTAUER BROTHERS against the Decision of the Collector of Customs at New York as to the Rate and Amount of Duties Chargeable on Certain Merchandise Imported per Nomadic and Entered May 31, 1899 (Entry 86418).

Opinion by Somerville, General Appraiser.

The goods in question consist of 520 pounds of mixed wool and hair, which were returned by the local appraiser and assessed by the Collector as wool, class 3, unwashed, at 3 cents per pound under the provisions of paragraphs 358 and 360 of the tariff act of July 24, 1897. The importation as actually made consisted of sheepskins with the wool on. No duty was assessed on the skins, which were passed as free, the quantity and value of the wool having been ascertained under rules prescribed by the Secretary of the Treasury, pursuant to the authority conferred by said paragraph 360.

The claim made in the protest is that the skins, including
53 the wool, are free of duty (1) under paragraph 562 of said act, as fur skins not dressed in any manner, and not specially provided for in said act; or (2) under paragraph 664, which places

on the free list "skins of all kinds, raw (except sheepskins with the wool on)."

The first ground of contention was practically abandoned at the hearing, and, therefore, need not be considered at any length. It is shown by the testimony, and admitted by the importer, that the goods are not fur skins, and are not used or sold as such in the markets of the country. (*In re* Kirby, G. A. 4381.)

The substance of the contention made at the hearing seems to be that the so-called wool, taken from the skins and classified by the collector as wool of the third class, is not in fact wool of any kind, but consists of hair of a very cheap grade. The importer testified that this hair had none of the qualities of the wool fibre; that it was worth in the market between 1 and 2 cents per pound, being injured by the use of lime in removing it from the skins, and that it was used mostly for stuffing purposes, such as filling sweat pads for horse collars and other like uses to which goat hair is put. The appellant, nevertheless, admits in his testimony that the skin from which the so-called hair is removed is the skin of an inferior grade of sheep, known as the Mocha sheep, being of Arabian origin, and that it is " the only sheepskin in the world" which, within his knowledge, could be used for making what is known as morocco.

Other witnesses testified that the article in question is mixed hair and wool, being the product of the Mocha sheep, and that it is used as carpet wool, being substantially identical with East Indian wool of a cheap grade, which is used for like purposes.

The wool examiner at the port of New York testified that in
54 his opinion the article was wool grown on the sheep, and was chiefly used for making the lowest grade of carpets and felts; that the importation really consisted of mixed wool and hair of the sheep, and contained 25 per cent. of wool, the remainder being hair.

A wool importer, engaged in the business for thirty-four years, testified as follows:

Q. Will you please examine the sample in this case and state whether or not you are familiar with articles of that kind?

A. I have not had practical experience in handling these skins, but I have handled similar product with that wool or hair on it. I detect two kinds of fibre here. One is of a wooly nature, and the other known as kemp in the trade—that is, the dead hair.

Q. What is the dead hair owing to?

A. Well, all that low type of animal, wild or half domesticated, are found in the East Indies, on the Himalaya Mountains and South America—in tropical climates where the wool has a tendency to turn to hair.

Q. Do all the wool bearing skins in these climates you have named have that peculiarity?

A. Yes, sir. We have wool here identical with this East Indian wool that is used here for carpet wool, for carpet filling. I am selling domestic product very similar to this for carpet filling.

Q. Is that article hair?

A. No, it is what we would call a carpet-filling wool.

Q. What is that used for?

A. For making carpet yarns.
Q. Could it be carded alone?
A. Yes, it could be carded alone. It is long enough.
Q. Is there any wool in that?
A. Yes, sir; the fibre here is identical with wool, and I should call it so. It is of the wool type.

55 In view of this testimony it is manifest that the skins bearing the wool in question were "sheepskins with the wool on," and were, therefore, excepted *eo nomine* from said paragraph 664 of the free list. The evidence fails to show that the articles are "shearling sheepskins," of the kind held by the Board to be free, *in re* Bloom (G. A. 4300), that decision being based upon the fact that the wool had already been sheared as nearly as was practicable or customary with skins of that kind, so that the quantity remaining on the skin was practically of no commercial value.

Nor is it material that hair of the sheep is mixed with the wool. As said by the Circuit Court of Appeals in Lyon *v.* Marine (55 Fed. Rep., 964, at 966):

The native sheep of the United States, the native sheep of all countries, produce fleeces whose value is depreciated more or less by the undue quantity of hair contained in them sheared from the belly, flanks, and parts of the thighs and arms of the animal. One of the aims in improving native sheep by judicious crossing is to reduce the percentage of this deleterious product. The native sheep of the United States and of all the countries named in paragraph 378, page 594 (class 3), of the Tariff Act of 1890, have a moderate percentage of hair in their fleeces. This is common knowledge, taught by all text books on sheep, and within the judicial cognizance of the Courts. The general facts of natural history are also within the judicial cognizance.

We may add that in establishing standard samples of wool deposited in the principal Custom Houses in the United States, under the authority of the Secretary of the Treasury, as authorized by paragraph 352 of the tariff act of 1897, and analogous paragraphs of previous tariff acts, the principle of classification recognized is rather that of race and blood only, and not of use or adaptability,

56 many wools of the first class being suitable only for carpets, and others are placed in the third class, from which a fair article of clothing could be made (Wool and Wool Manufacturers, 1894, Ford, p. 269).

The protest is accordingly overruled on all grounds and the collector's decision affirmed.

H. M. SOMERVILLE,
J. B. WILKINSON, JR.,
Board of Classification of U. S. General Appraisers.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts

were ascertained by said Board than such as are shown by said decision and other exhibits hereto attached.

WILBUR F. LUNT,
CHAS. P. McCLELLAND,
Board of U. S. General Appraisers.
J. E. D.

Endorsed: U. S. Circuit Court. Filed Jan. 7, 1905. Southern District New York. John A. Shields, Clerk.

57 United States Circuit Court, Southern District of New York.

No. 3641.

THE GOAT & SHEEPSKIN IMPORT COMPANY
vs.
THE UNITED STATES.

To the Circuit Court of the United States for the Southern District of New York:

The undersigned, a General Appraiser under the Act of June 10th, 1890, to whom it was referred by this Honorable Court by an order made January 9, 1905, to take further evidence in the above entitled matter, do hereby return such further evidence taken by me pursuant to such order.

Dated, New York, May 4, 1905.

CHAS. P. McCLELLAND,
United States General Appraiser, as an Officer of the Court.

58 United States Circuit Court, Southern District of New York.

No. 3641.

THE GOAT & SHEEPSKIN IMPORT COMPANY
vs.
THE UNITED STATES.

NEW YORK, *April* 14, 1905.

Before Hon. Charles P. McClelland, as Officer of the Court.

Present: J. Stuart Tompkins, Esq., for the Importers. D. Frank Lloyd, Esq., Assistant U. S. Attorney, for The United States.

JOHN G. DUFFY, called as a witness on behalf of the Importers, being duly sworn, testified as follows:

By Mr. TOMPKINS:

Q. What is your occupation?

A. I am a clerk in the office of the Board of General Appraisers.

Q. Have you with you a sample of the merchandise which was the subject of the Board's decision G. A., 4593, T. D., 21737?

A. I have the official exhibit in the case.
Q. Please produce it?
(Witness produces a sample.)
59 Mr. TOMPKINS: I offer this sample in evidence.
Said sample received and marked Illustrative Exhibit A.
It is stipulated that this sample, Illustrative Exhibit A, shall be returned to the office of the Board of General Appraisers upon the final determination of this suit.

BERNARD W. WEILER, called as a witness on behalf of the Importers, being duly sworn, testified as follows:

By Mr. TOMPKINS:

Q. What is your position?
A. I am manager of the Goat & Sheepskin Import Company.
Q. How long have you held that position?
A. For about four years.
Q. What was your occupation prior to that time?
A. I was foreign buyer for the same concern.
Q. For how many years were you a foreign buyer?
A. For about thirteen years.
Q. Where were you located when abroad?
A. I was located in different countries, repeatedly, also in Arabia, and I started their branch house there and stayed three or four times as much as a year at a time.
Q. While acting as foreign buyer have you had occasion to purchase merchandise like Exhibit 1 and Illustrative Exhibit A?
A. Yes, I bought them in large quantities.
Q. Can you tell from personal observation and handling whether or not Exhibit 1 and Illustrative Exhibit A are identical?
A. To the best of my belief they are nothing of the kind.
60 Q. What, if any, is the difference?
A. The difference is that the hair on Exhibit 1 is shorter and of a different nature than this Illustrative Exhibit A. I believe this Exhibit A to be a cut from the belly where the hair is shortest; it would be much longer on the back; if we had an entire skin the hair on the back would be considerably longer; the growth of an animal is always longer on the back than it is on the belly.
Q. Are they taken from the same kind of sheep?
A. No. I believe that Exhibit A is from an entirely different breed of sheep than Exhibit 1.
Q. What is there about Illustrative Exhibit A which leads you to make that statement?
A. Because the growth is longer and as far as I can see from this small piece it comes from a much larger skin, which is called Jeddah wool; whereas Exhibit 1 is called commercially a Hodeida hair sheep.
Q. Is there any difference in the country of origin, the place of origin, of the two skins represented by Exhibit 1 and Illustrative Exhibit A?
A. Yes; the skin of Exhibit A comes from a mountainous country near Jeddah; they come from Mecca, the pilgrim city of Mecca, and

they are much larger sheep; the average weight of the skin and wool would be three and one-half to four pounds; about half of them are white and half of them are black. While the skin represented by Exhibit 1 are all white, and the smaller lighter sheep, the weight of the skin would be only *be* about a pound and a half.

Q. Is Jeddah sheep, the Jeddah wool sheep, that you have referred to, a species of mocha?

A. Yes; it is one of the species of mocha sheep. There are a good many of them.

Q. Have you ever imported the Jeddah sheepskins?

61 A. Certainly, we import them in the regular course of business all the time.

Q. Have you protested on your Jeddah sheepskins?

A. No, sir; we would never think of doing it.

Q. Why?

A. Because I consider that they ought to pay duty on their growth.

Q. Do you consider that the substance on the Jeddah sheepskins is wool of class three, the growth?

A. Yes.

Q. How, if at all, does the growth on the Jeddah sheep differ from the growth on the white haired sheepskin from Hodeida, represented by Exhibit 1?

A. The growth on the Jeddah sheep is longer and might be used for the purposes for which wool is used; while the growth on a Hodeida sheep is short and cannot be used for any purpose where wool is generally used.

Q. How long have you been handling skins of the kinds represented by Exhibit 1 and Illustrative Exhibit A?

A. Really all the time; really for twenty years; since I am in business, about twenty years.

Q. Do you say all of the protests of the Goat & Sheepskin Import Company relate only to the mocha white heads like Exhibit 1 as distinguished from Jeddah?

A. Certainly, decidedly; I mean all the protests in question here.

Q. Do you know what the substance on the skin Exhibit 1 is used for?

A. The buyers always tell me that the only thing it can be used for is for stuffing——

Mr. LLOYD: I move to strike out that answer.

Motion granted.

62 Q. To whom do you sell skins like Exhibit 1?

A. To manufacturers of glove leather and shoe leather.

Q. To whom do you sell Jeddah sheepskins?

A. To manufacturers of glove leather.

Q. You say you have occasion to buy in wholesale quantities and import wool sheepskins as well as the hair sheepskins?

A. Certainly.

Q. You know the difference between hair and wool?

A. Yes.

Q. What is the difference?

A. Well, wool can be used for all kinds of purposes where hair cannot be used.

Q. Does the length of the growth on skins like Exhibit 1 affect the price which you are compelled to pay for them?

A. Most decidedly, because the buyer when he buys skins he calculates on what he can obtain for the growth as well as what the pelt is worth; and I know that the buyers of skins like Exhibit 1 would calculate that they could get nothing at all for the growth; he wouldn't get as much for it as the cost of removing. Whilst on skins similar to Exhibit A he would consider that the growth is worth something, and he would pay more for the skin in consequence.

Q. Do we understand you to testify that you pay less for skins like Exhibit 1 with longer hair or growth on than you do for skins with shorter hair?

A. I don't quite understand the question.

Q. (Question repeated.)

A. No; the hair is never long enough, the growth is never long enough to be worth anything to the manufacturer. Let me qualify that——

63 By the REFEREE:

Q. The question is whether you pay in buying any more for a skin like Exhibit 1 with long hair than you would if it had short hair?

A. No, sir.

By Mr. TOMPKINS:

Q. How do you buy skins like Exhibit 1, by weight of the pelt and the growth together or by the thousand?

A. We don't take any notice as to the growth, because we get no value for it; our only consideration in buying it is the value of the pelt.

Cross-examination by Mr. LLOYD:

Q. Please state the difference between what is known as wool and hair?

A. The hair is rather coarse and won't card; it can only be used for stuffing and such purposes; whilst wool can be used for all kinds of purposes and is much more valuable.

Q. What is the difference in the fiber, in the physical appearance of the fiber, of wool and hair, if any?

A. Hair is harsh and short; whilst wool has got certain lengths and has a silky feel, more silky feel.

Q. Isn't it a fact that some of the growth on Exhibit No. 1 is quite as long as the growth on Illustrative Exhibit A?

A. This Exhibit A is only a small cut from the belly, and if we had the entire skin before us we would find much longer wool at the back.

Q. Can you state from an examination of that small Exhibit A

that you hold in your hand, that it is not taken from the back of the sheep?

A. I think I can.

Q. What is there about it to show that it is taken from the belly and not from the back?

64 A. Because it is very thin; if it was on the back the pelt would be thicker.

Q. Can you state that the skin on the back of that sheep was thicker than the skin on the belly in the same sheep?

A. To the best of my belief I would. I have been in business for a good many years, and I always found the skins on the belly to be much thinner than on the back.

Q. Can the growth on Exhibit 1 be carded?

A. No, to the best of — belief not, because I am not in the wool business.

Q. You cannot state positively that the growth on Exhibit 1 cannot be carded?

A. I am not in the wool business, I always heard that to the best of my belief it could not.

Q. Can you state what the growth on Exhibit 1 is used for?

A. It is used for stuffing.

Q. Isn't it used for making a yarn for carpets?

A. I never heard that it is.

Q. Do you state that it is not so used?

A. Of course I am not a wool man. To the best of my belief, my understanding, it is not.

Q. Now, isn't it a fact that the growth on Exhibit 1 is a species of wool?

A. I decidedly say not.

Q. Why not?

A. Because it has got the characteristics of hair. Goat hair would be worth more than that, would be finer.

By the REFEREE:

Q. Name the firms to whom you sold skins like Exhibit 1?

A. Several firms.

Q. Name them?

A. For shoe purposes, Charles L. Klauder of Philadelphia.

65 Now, you want to know for glove purposes: Levor & New, of New York City and Gloversville, George Mandril of Gloversville.

Q. To whom do you sell skins like Illustrative Exhibit A?

A. At present not many of them come to the United States, because Europe pays much better prices for them.

Q. How long since your firm imported any of them?

A. I think about two years ago.

Q. To whom did you sell them?

A. I sold them to a wool puller in Philadelphia, Reinicke of Philadelphia.

Q. I thought I understood you to say that you sold them to glove makers?

A. I forgot to mention that we also sold it to wool pullers.
Q. What glove makers did you sell them to?
A. I really don't remember off-hand, because it is so long that we didn't import them, with the exception of one lot; I remember that we sold them to a wool puller.

GEORGE B. RITCHIE, called as a witness on behalf of the Importers, being duly sworn, testified as follows:

By Mr. TOMPKINS:

Q. What is your business?
A. Wool and hair importer; importer and dealer in wools and hairs; 55 Ferry Street.
Q. What is the title of your firm?
A. George B. Ritchie.
Q. How long have you been engaged in that business?
A. About twenty years.
66 Q. Do you import and sell both wool and hair in wholesale quantities?
A. Yes, sir.
Q. Is your business local or does your market extend throughout the country?
A. We sell all over the country and buy all over the world, that is, we buy hairs and wools all over the world.
Q. Please examine the growth on Exhibit 1 and state what, in your opinion, that is?
A. Well, to the best of my knowledge and belief we would call that a goat hair; valued washed and cleaned at four and one-half to five cents a pound.
Q. Is the value you have just given, its value after it has been removed from the skin?
A. Removed and washed clean. It is not a desirable hair for working purposes.
Q. For what commercial purpose is a growth like that on Exhibit 1 suitable?
A. If it has any quality of colors in it, it goes into stuffing; it is washed and put into horse collar pads; and if it runs pretty white it is sometimes used in these low carpet yarns, where they put in such stuff as jute bagging is made of and some hair like this on Exhibit 1. The yarn itself sells for six and a half to seven cents a pound.
Q. Is this growth on Exhibit 1 suitable for carding purposes?
A. No; you couldn't do anything with it absolutely; they wouldn't anybody buy it; it is a stock that has little or no value. In the first place, it is all dead hair; it is of no value.
Q. If you were informed that the growth on Exhibit 1 is a growth on a mocha whitehead sheep skin as distinguished from a goat skin, would that affect your answer in regard to the value of the material?
A. No; we would simply call it a low goat hair. It wouldn't make any difference what the other man called it.

67 Q. Would not this growth on Exhibit 1 be a good delivery on an order for low grade wool?

A. No, sir.

Q. Why?

A. Because it is not commercially known as wool by the people that use it; you can't go around and sell that to these woolen manufacturers and tell them it is wool; they would give you the laugh.

Cross-examination by Mr. LLOYD:

Q. Can you state that that Exhibit 1 is not in fact a sheepskin?

A. To the best of my knowledge and belief that is not commercially sheep hair or wool; they can call it sheepskin if they please, but commercially in my trade it is not a sheep's wool; it is a goat hair.

Q. It can be carded, can it not?

A. If a man wants to throw away money; there wouldn't be any money in carding stuff like that.

Q. Couldn't you card it and make a carpet yarn of it?

A. It can be adulterated and made into a low yarn, what is known as car wheel stuffings, and the bagging that comes around cotton is used too they run it all in and make as low a yarn as they possibly can. But for carpet purposes it would be undesirable from the fact that it is all kemp and won't take any dye.

Q. What is the distinguishing feature of kemp?

A. It is a dead hair. You will find it in the only wool that I know of that is classed as wool, what is known as mawah.

Q. You find a certain amount of kemp in hair and wool skins, do you not?

A. Yes, a small per cent.; depends on what wool it is.

Q. You say there is no wool at all on that skin, Exhibit 1?

68 A. Not as I would know it commercially, as being a hair dealer and low grade wool dealer.

Q. There are different kinds and classes and grades of wool, are there not?

A. Hundreds of classes and grades. But I wouldn't have the nerve to offer that (referring to growth on Exhibit 1) to any man as wool.

Q. What is the difference between the substance or the growth on Exhibit 1 and Illustrative Exhibit A?

A. Of course, when I am speaking I am speaking merely from the hair end of it; we would take this stock and wash it and sell it; while Exhibit A is considerably better stuff and it don't seem to have the percentage of kemp in it that the other has and this stock would probably bring in the neighborhood of ten to ten and a half cents.

By the REFEREE:

Q. Regardless of its value, do you find anything in Exhibit A which you recognize as wool?

A. Well, I could stretch my conscience to say that it was wool.

Q. Without stretching your conscience?

A. I think we might call it a wool, but it is commercially known —all that grade of stuff is hair.

By Mr. LLOYD:

Q. That is, Illustrative Exhibit A is known as hair?
A. Yes; but it would be worth double the value of Exhibit 1.
Q. Then, in other words, both Illustrative Exhibit A and Exhibit 1 are in your judgment hair?
A. Commercially speaking.
Q. But Illustrative Exhibit A is a finer quality of hair than Exhibit 1?

A. And a readily marketable commodity; while Exhibit
69 1 would be a very difficult hair to sell at any price.

Q. They are both hairs, but Exhibit A is worth double of what Exhibit 1 is worth?
A. According to my judgment in hairs.
Q. Illustrative Exhibit A, is that from a goat or a sheep?
A. Well; I don't know what it is from; I don't know what the skin is commercially known as; but the product, the hair or wool part of it, would be commercially known as a goat hair.

By the REFEREE:

Q. You don't deal in skins at all?
A. We deal in wool and hair.

By Mr. LLOYD:

Q. After they have been removed from the skin?
A. After they have been removed from the skin.

Importers rest.
Adjourned.
Government rests.
Testimony closed.

Endorsed: U. S. Circuit Court. Filed May 4, 1905. Southern District, New York. John A. Shields, Clerk.

70 United States Circuit Court, Southern District of New York.

No. 3641.

GOAT AND SHEEPSKIN IMPORT COMPANY
vs.
THE UNITED STATES.

Appeal from a decision of the Board of United States General Appraisers.

TOWNSEND, *Chief Judge:*

The merchandise in controversy consists of mocha white-head sheepskins from which the coat had not been removed at the time of importation. They were assessed for duty at three cents per pound

under the provisions of paragraph- 351, 358 and 360 of the Act of 1897 as wools of the third-class on the skin, and were claimed to be free under the provisions of paragraph 664 of said Act as "skins of all kinds, raw (except sheepskins with the wool on)," &c. The sole question presented is whether these skins have wool on or hair only. The Board of General Appraisers reached the conclusion that a certain percentage of the covering was wool, and therefore that the skins were sheepskins with the wool on within the meaning of the tariff act. Inasmuch as there was sufficient evidence to support the finding of the Board as to the fact of wool upon the skins, and as the Court upon examination of the sample is unable to say that this finding is incorrect, and as the definitions in the encyclopædias and dictionaries support the claim that such a product is wool although
71 of a low order, the decision of the Board of General Appraisers is affirmed.

J. Stuart Tompkins, for the Importers.
D. Frank Lloyd, Ass't U. S. Attorney, for the United States.

(Endorsed:) Suit No. 3641.—United States Circuit Court, Southern District of New York.—Goat & Sheepskin Import Company *vs.* The United States.—Opinion, Townsend, C. J.—U. S. Circuit Court, Southern District of New York.—Filed May 19, 1905.—John A. Shields, Clerk.

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, held at the United States Circuit Court Rooms in the Post Office Building in the City of New York, on the 26th day of May, in the year of our Lord one thousand nine hundred and five.

Present: The Hon. William K. Townsend, Circuit Judge.

"A," Suit No. 3641.

GOAT & SHEEPSKIN IMPORT CO.
vs.
UNITED STATES.

The above cause coming on for hearing and determination before this Court on the application of Goat and Sheepskin Import
72 Co., importers, for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon,

Now, after hearing D. Frank Lloyd, Assistant U. S. Attorney on behalf of the Collector, for affirmance, and Hatch, Keener & Clute, Esqs., counsel for the said importers, for reversal, on motion of Henry L. Burnett, U. S. Attorney,

It is ordered, adjudged and decreed, that there was no error in said proceedings before said Board of General Appraisers, and that

their decisions herein be and the same are hereby in all things affirmed.

WM. K. TOWNSEND,
U. S. Circuit Judge.

(Endorsed:) "A" Suit No. 3641.—U. S. Circuit Court, Southern District of New York.—Goat & Sheepskin Import Co. *vs.* United States.—Judgment of Affirmance.—Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed May 29, 1905.—John A. Shields, Clerk.

73 United States Circuit Court, Southern District of New York.

Suit No. 3641.

GOAT & SHEEPSKIN IMPORT CO., Appellant,
against.
THE UNITED STATES, Appellee.

Application for Allowance of Appeal.

To the Honorable Judges of said Court:

The petition of the Goat & Sheepskin Import Co., a corporation organized under the laws of the State of New York, doing business at No. 28 Spruce street, in the City of New York, prays that the petitioner may be allowed by its attorneys, Hatch, Keener & Clute, an appeal to the United States Circuit Court of Appeals, for the Second Circuit, from the decree passed and the judgment entered in pursuance thereof in this case, on the 26th day of May, 1905, affirming the decision of the Board of United States General Appraisers, which overruled the protests of the importers; and that a proper citation may be issued and served upon Nevada N. Stranahan, Collector of Customs at the Port of New York, or his attorneys; and that the record of said decree and judgment, and all papers relating thereto shall be transmitted to said United States Circuit Court of Appeals, for the Second Circuit, in order that the said decree may be re-
74 viewed and reversed by said United States Circuit Court of Appeals.

HATCH, KEENER & CLUTE,
Attorneys for Appellant, No. 100 Broadway, New York City.

Allowed.
E. H. LACOMBE,
United States Circuit Judge.

(Endorsed:) United States Circuit Court, Southern District of New York. Goat & Sheepskin Import Co., Appellant, against The United States, Appellee. Suit No. 3641. Application for Allowance of Appeal. Heath, Keener & Clute, Att'ys for Appellant, 100 Broadway, N. Y. City. A copy of the within paper has been this day

received at this office. Jun. 23, 1905. Henry L. Burnett, U. S. Attorney. U. S. Circuit Court, Southern District of New York. Filed Jun. 23, 1905. John A. Shields, Clerk.

75 United States Circuit Court, Southern District of New York.

Suit No. 3641.

GOAT AND SHEEPSKIN IMPORT COMPANY, Appellant,
against
THE UNITED STATES, Appellee.

Assignment of Errors.

The Goat & Sheepskin Import Company, a corporation organized under the Laws of the State of New York, doing business at No. 28 Spruce street, in the City of New York, hereby assigns error to the decision and judgment of the Circuit Court of the United States, for the Southern District of New York, in the following particulars:

I. The United States Circuit Court, for the Southern District of New York, erred in affirming the decision of the Board of United States General Appraisers herein.

II. The Court erred in not reversing the decision of the Board of United States General Appraisers.

III. The said Court erred in holding that the Board of General Appraisers reached the conclusion that a certain percentage of the covering was wool.

76 IV. The said Court erred in holding that there was sufficient evidence to support the finding of the Board as to the fact of wool upon the skins.

V. The said Court erred in not holding that there was no evidence in this case to support any finding of fact that the substance or growth on the skins in question consisted of wool.

VI. The said Court erred in not holding that according to the great weight and preponderance of the evidence in this case, the substance or growth on the skins in question consisted of "hair," as distinguished from "wool."

VII. The said Court erred in holding that the definitions in the encyclopædias and dictionaries support the claim that the substance or growth on the skins in controversy is "wool," and said Court erred in not holding that the definitions in the encyclopædias and dictionaries support the claim of the appellant that the substance or growth on the skins in question is "hair."

VIII. The said Court erred in finding, either directly, or by implication, that the substance on the skins in question was "wool," and in not finding on the contrary that it was "hair."

IX. The said Court erred in not finding that the evidence in this case was unanimous, uniform, undisputed and uncontroverted that the substance on the skins in question consisted of "hair," as distinguished from "wool," both as a matter of fact, and according to trade and commercial usage.

X. The said Court erred in holding, either directly, or by implication, that the merchandise in question was of the same character as that which was the subject of G. A. 4593, and in not holding to the contrary.

77

XI. The said Court erred in not holding that the Board erred in excluding the question on page 45, which was asked of the Government Wool Examiner, Robert N. Kitching, as follows:

"Q. What led you to the change in practice of assessing duty "on the substance on skins like Exhibit 1?"

and in not holding that importers' exception to that ruling was valid, and warranted a reversal of the Board's decision.

XII. The said Court erred in holding that the substance on the said skins was classifiable and dutiable as assessed, at three cents per pound under the provisions of paragraphs 351, 358 and 360 of the Tariff Act of July 24, 1897, as "wools of the third-class on the skin."

XIII. The said Court erred in not holding that the merchandise in controversy was entitled to free entry under the provisions of paragraph 664 of said act, covering

"skins of all kinds, raw (except sheepskins with the wool on) and "hides not specially provided for in this act."

XIV. The said Court erred in not holding that the substance on the skins in question was free of duty under the provisions of paragraph 571 of said Act, if not entitled to free entry under the provisions of paragraph 664, said paragraph 571 reading:

"Hair of horse, cattle, and other animals cleaned or un-
78 "cleaned, drawn or undrawn, but unmanufactured, not "specially provided for in this Act; and human hair, raw, "uncleaned, and not drawn."

XV. The said Court erred in holding, either directly, or by implication, that the question involved was the same as that settled in G. A. 4593.

XVI. The said Court erred in not distinguishing G. A. 4593, and in not distinguishing Lyon *v.* Marine, 55 Fed. Rep., 964.

Dated New York, June 22d, 1905.

HATCH, KEENER & CLUTE,
Attorneys for Appellant, No. 100 *Broadway,*
Manhattan Borough, New York City.

(Endorsed:) United States Circuit Court, Southern District of New York.—Goat and Sheepskin Import Company, Appellant, ag'st The United States, Appellee. Suit No. 3641.—Assignment of Errors.—Hatch, Keener & Clute, Att'ys for Appellant, 100 Broadway, N. Y. City.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 22, 1905.—John A. Shields, Clerk.

Know all men by these presents, That I, Frederick W. Acton, residing at No. 121 St. Nicholas avenue, in the City of New York, am held and firmly bound unto the United States of America in the sum of two hundred and fifty ($250) dollars, to be paid to the

United States of America, for the payment of which, well and
79 truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal and dated the 22d day of June, in the year nineteen hundred and five.

Whereas, The Goat & Sheepskin Import Co. has applied to the United States Circuit Court of Appeals, for the Second Circuit, for the allowance of an appeal from the decision of the United States Circuit Court, for the Southern District of New York, rendered on the 29th day of May, 1905, in an action of said Goat & Sheepskin Import Co. against the United States.

Now, therefore, the condition of this obligation is such that if the said Goat & Sheepskin Import Co. shall prosecute said appeal with effect and shall answer all costs of the appeal which may be awarded against them if they fail to make good said appeal, then the obligation shall be void; otherwise to remain in full force and effect.

F. W. ACTON.

Sealed and delivered and taken and acknowledged this 22d day of June, 1905.

CHAS. T. FISH,
[SEAL.] *Notary Public, New York County.*

UNITED STATES OF AMERICA,
Southern District of New York, County of New York, ss:

Frederick W. Acton, being duly sworn, says: That he resides in the Southern District of New York, in the City of New York, and that he is worth the sum of two hundred and fifty ($250)
80 dollars over and above all his just debts and liabilities.

F. W. ACTON.

Sworn to before me this 22d day of June, 1905.

CHAS. T. FISH,
[SEAL.] *Notary Public, New York County.*

Approved.
E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States Circuit Court, Southern District of New York.—Goat & Sheepskin Import Co., Appellant, against The United States, Appellee.—Bond.—Hatch, Keener & Clute, Att'ys for Appellant, 100 Broadway, N. Y. City.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 22, 1905.—John A. Shields, Clerk.

By the Honorable E. Henry Lacombe, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, to Nevada N. Stranahan, as Collector of the Port of New York, on behalf of the United States, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the 19th day of
81 July, 1905, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of New York, wherein Goat & Sheepskin Import Co. is appellant and the United States is Appellee to show cause,if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan,,in the City of New York, in the District and Circuit above named, this 21st day of June, in the year of our Lord one thousand nine hundred and five, and of the Independence of these United States the one hundred and twenty-ninth.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for Southern District of New York, in the Second Circuit.

(Endorsed:) United States Circuit Court of Appeals, for the Second Circuit.—Goat & Sheepskin Import Co., Appellant, *vs.* The United States, Appellee.—Citation.—Hatch, Keener & Clute, Att'ys for App'l't, 100 Broadway, N. Y. City.—A copy of the within paper has been this day received at this office. June 23, 1905, Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 23, 1905.—John A. Shields, Clerk.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered
82 from one to eighty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Goat & Sheepskin Import Company, Appellant, against The United States, Appellee (No. 3641), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of July, in the year of our Lord one thousand nine hundred and five and of the Independence of the said United States the one hundred and thirtieth.

[L. S.] JOHN A. SHIELDS, *Clerk.*

83 United States Circuit Court of Appeals for the Second Circuit.

No 133, October Term, 1905.

Argued February 23, 1906; Decided February 26, 1906.

(3641.)

THE GOAT AND SHEEPSKIN IMPORT COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Judges Lacombe and Coxe.

Affirmed on the opinion of the Circuit Court.

J. S. Tompkins, for the Appellant.
D. Frank Lloyd, Assistant United States Attorney, for the Appellee.

84 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 7th day of March one thousand nine hundred and six.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Circuit Judges.

(3641.)

GOAT AND SHEEPSKIN IMPORT COMPANY, Appellant,
vs.
UNITED STATES, Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said Circuit Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

E. H. L.

85 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Goat & Sheepskin Co. *vs.* U. S. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 7, 1906. William Parkin, Clerk.

86 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 85 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Goat & Sheepskin Import Co. against United States, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 9th day of April, in the year of our Lord One Thousand Nine Hundred and Six and of the Independence of the said United States the One Hundred and thirtieth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

87 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Goat & Sheepskin Import Company is appellant and The United States is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
88 States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of May, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

89 [Endorsed:] File No. 20,206. Supreme Court of the United States. No. 704, October Term, 1905. The Goat & Sheepskin Import Co., *vs.* The United States. Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed May 2 1906 William Parkin, Clerk.

90 United States Circuit Court of Appeals for the Second Circuit.

Suit No. 3641.

THE GOAT AND SHEEPSKIN IMPORT COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

Stipulation.

It is hereby stipulated and agreed by and between the attorneys for the respective parties in the above entitled suit that the certified transcript of record on file in the office of the Clerk of the Supreme Court of the United States, may be taken as a return to the writ of certiorari herein dated May 1st, 1906, issued out of the said Supreme Court to the Honorable the Judges of the United States Circuit Court of Appeals, for the Second Circuit.

Dated, New York, May 2nd, 1906.

HATCH, KEENER & CLUTE,
Attorneys for Appellant.
HENRY L. STIMSON,
Per D. F. L.,
Attorney for Appellee.

Endorsed: U. S. Circuit Court of Appeals, for the Second Circuit The Goat and Sheepskin Import Company, Appellant, against the United States, Appellee. Stipulation. Hatch & Clute, att'ys for Appellant, 100 Broadway N. Y. City. United States Circuit Court of Appeals, Second Circuit. Filed May 2, 1906. William Parkin, Clerk.

91 To the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the Clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

92 [Endorsed:] 704 20206 United States Circuit Court of Appeals, Second Circuit. Goat & Sheepskin Co. *v.* U. S. Return to Certiorari.

93 [Endorsed:] File No. 20,206. Supreme Court U. S., October Term, 1905. Term No. 704. The Goat & Sheepskin Import Co., petitioner, *vs.* The United States. Writ of Certiorari and return. Filed May 9", 1906.

No. [redacted]261

FILED
APR 20 19[redacted]
JAMES H. McKEN[redacted]

In the Supreme Court of the United States.

GOAT & SHEEPSKIN IMPORT CO.,
Petitioner,

against

THE UNITED STATES,
Respondent.

Suit No. 3641.

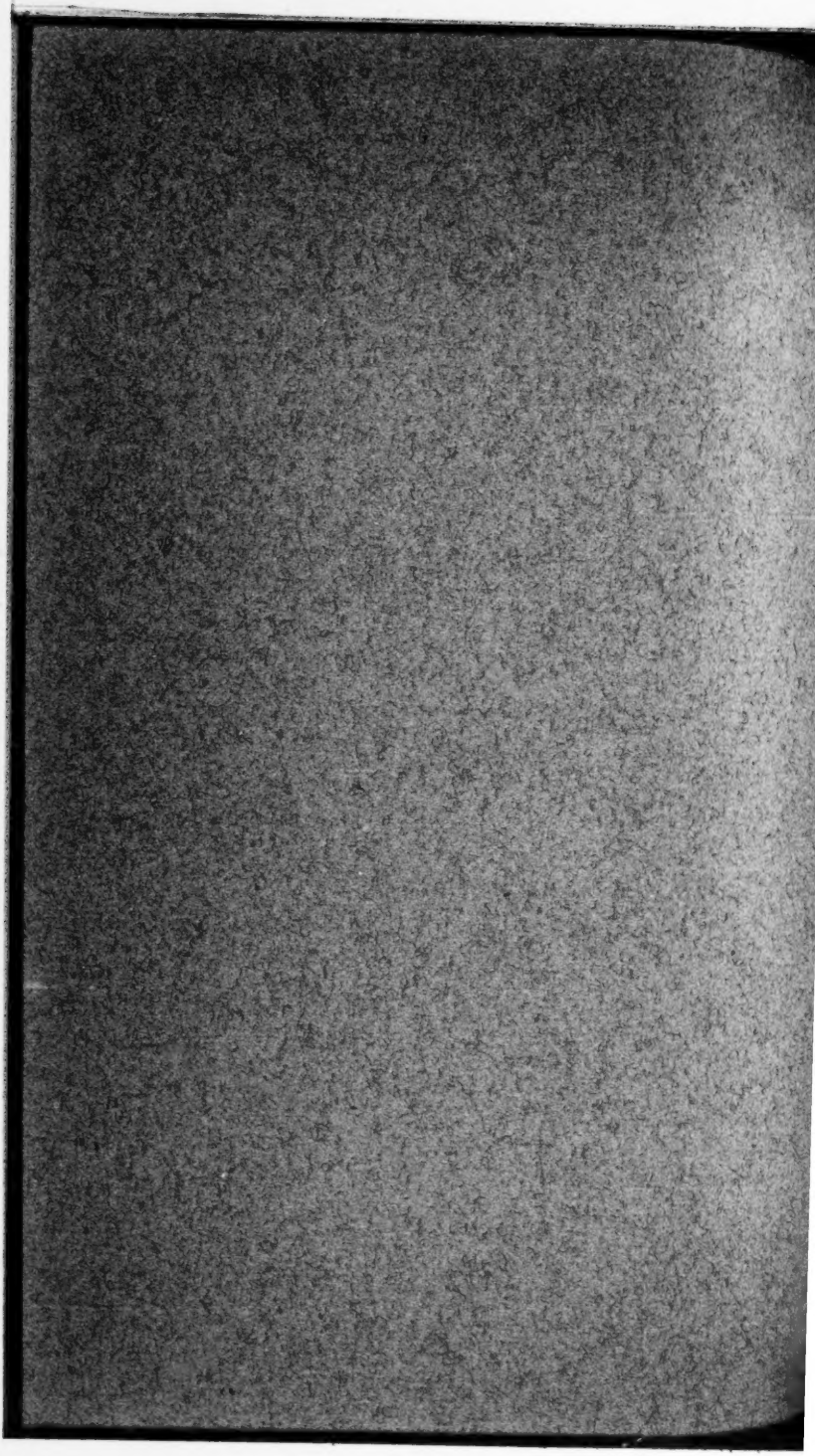
PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

EDWARD S. HATCH,
100 Broadway,
New York City,

and

J. STUART TOMPKINS,
56 Pine Street,
New York City,
Of Counsel for Petitioner.

APPEAL PRINTING COMPANY, 14-16 VESEY ST., NEW YORK



IN THE

Supreme Court of the United States.

GOAT & SHEEPSKIN IMPORT COMPANY, Petitioner, against THE UNITED STATES, Respondent.	Suit No. 3641.

Petition for Writ of Certiorari to the Circuit Court of Appeals, for the Second Circuit, and Brief in Support Thereof.

The Goat & Sheepskin Import Co., through its counsel, Edward S. Hatch and J. Stuart Tompkins, respectfully prays that a writ of certiorari be allowed herein, to bring the case before this Court for a review of the decree of the United States Circuit Court of Appeals for the Second Circuit, affirming the decision of the Circuit Court without opinion, and adjudging that an article commercially known as mocha hair, used for stuffing purposes (and never as wool) was properly assessed for duty at a rate equivalent to more than one hundred per cent. *ad valorem*, as "wools of the third class."

The Importance of the Issue.

This application is one of the utmost importance to the shoe manufacturers of this country who consume large quantities of the mocha skins which are the subject of this suit It is a matter of public knowledge that the present Tariff Act, with its duty on hides, imposes a heavy burden on those manufacturers. The judgment in the present case rests upon a change in practice of the government wool examiner, at New York His testimony furnishes a mere shred of evidence to sustain his change in practice and alone supports the present judgment, as against the testimony of nine witnesses to the contrary, called from various trades. We confidently expect that this Court will review the proceedings in this case, which, if allowed to stand, will aggrevate the burden of a class of domestic manufacturers, who are already demanding tariff revision to relieve them from the present duty on hides, and who suffer further, in the present case, by the imposition of duty on the dead hair or hemp on the skins, which the examiner, after ten years of practice to the contrary, decided to be wool.

Brief in Support of the Petition.

The merchandise consists of mocha white sheepskins from Hodeida, Arabia, with a commercially worthless hair or substance thereon, in that it costs more to remove the hair from the pelts than the hair eventually sells for (fols. 185, 110). This hair was returned for duty at three cents per pound under the provisions of Paragraphs 351, 358 and 360 of the Tariff Act of July 24, 1897, as "wools of the third class," on the skin.

The paragraphs above named read as follows:

"351. Class three, that is to say, Donskoi, "native South American, Cordova, Val- "paraiso, native Smyrna, Russian Camels' "hair, and all such wools of like character as "have been heretofore usually imported into "the United States from Turkey. Greece, "Syria and elsewhere, excepting improved "wools hereinafter provided for."

"358. On wools of the third class and on "camels' hair of the third class the value "whereof shall be twelve cents or less per "pound, the duty shall be four cents per "pound."

"360. The duty on wools on the skin shall "be one cent less per pound than is imposed "in this schedule on other wools of the same "class and condition, the quantity and value "to be ascertained under such rules as the "Secretary of the Treasury may prescribe."

The merchandise was claimed in the protest to be entitled to free entry under Paragraph 664 of the Free List, reading as follows:

"664. Skins of all kinds, raw (except sheep- "skins with the wool on), and hides not "specially provided for in this Act;"

and in some of the protests, the substance on the skins, if any, was claimed to be free of duty under Paragraph 571 of the Free List, which reads as follows:

"571. Hair of horse, cattle, and other ani- "mals, cleaned or uncleaned, drawn or un- "drawn, but unmanufactured, not specially "provided for in this Act; and human hair, "raw, uncleaned, and not drawn."

The Board of General Appraisers and the Circuit

Court held, as we contend contrary to all the evidence in the case and in total disregard of the doctrine of commercial designation as laid down by this Court, that the substance on the skins should be assessed for duty as wool of the third class, and overruled the protests.

(*Decisions, fols. 149-152, 208-211.*)

The Circuit Court of Appeals for the Second Circuit, after giving the matter exceptionally brief consideration, affirmed the decision of the Circuit Court without opinion.

I.

The evidence in this case is uniform, convincing and uncontroverted that the substance on these mocha whitehead sheepskins, according to the general commercial or trade understanding, as well as according to common understanding, is not wool, but, on the contrary, is hair, and it follows that the Collector's classification of the substance as wool of Class 3 was erroneous.

(A)

It is difficult (not to say impossible) to understand how any person, after carefully reading the testimony in this case, and thereafter examining the official sample in the light of that evidence, could arrive at the conclusion that the growth on these skins is wool in a trade sense or any other sense, or that it is anything more or less than mocha hair.

The Government failed to call a single witness to substantiate its claim. On the other hand the importers called six witnesses before the Board, and three additional witnesses in the Circuit Court, some of them well known and generally recognized as men of high standing and probity, and their combined evidence is wholly convincing that the substance or growth on these skins would not be and never has been recognized in the trade as wool, that on the contrary it has always been generally and uniformly bought and sold only under the name of "mocha hair," and is so known and recognized not only in commerce, but also according to common understanding; that it is used for purposes other than those to which wool is applied—and that this mocha hair would not be accepted as a good delivery under an order for even low grade wool.

Upon this point, Mr. Ritchie, an entirely disinterested witness, testified in the Circuit Court as follows:

"Q. Would not this growth on Exhibit I "be a good delivery on an order for low grade "wool?

"A. No, sir.

"Q. Why?

"A. Because it is not commercially known "as wool by the people that use it; you can't "go around and sell that to these woolen "manufacturers and tell them it is wool; "they will give you the laugh (fol. 199).

* * * * * *

"Q. You say there is no wool at all on that "skin, Exhibit I?

"A. Not as I would know it commercially, "as being a hair dealer and low grade wool "dealer.

"Q. There are different kinds and classes "and grades of wool, are there not?

"A. Hundreds of classes and grades. But "I wouldn't have the nerve to offer that (re- "ferring to growth on Exhibit I) to any man "as wool" (fol. 202).

The above quoted testimony of Mr. Ritchie is abundantly corroborated, the foregoing being given simply as a sample of the character of the evidence which appears all through this record from beginning to end.

See the testimony of

Mr. Souls, fols. 86-89.
Mr. Klauder, fols. 97-98. 101, 104.
Mr. Parkhurst, fols. 113-115, 117-119.
Mr. Simon, fols. 126-127.
Mr. Weiler, fols. 191-192,

as well as the testimony of

Mr. Ritchie, fols. 199-202,

all of which was admitted *without any objection being raised on the part of Government Counsel,* and all of which, it is submitted, strongly tends to prove that the covering on these low grade sheepskins *on and prior to July 24, 1897, would never have been considered, accepted, or sold as wool,* but that, on the contrary, it was on and prior to July 24, 1897, uniformly regarded, bought and sold at wholesale in the United States as hair.

This general and uniform commercial understanding and usage, excluding this article from the category of merchandise regarded in trade as "wool," and including it in the category of merchandise known as "hair," should be taken into consideration and be given weight in determining whether or not this merchandise was properly

classified by the Collector under Paragraph 358 of the Tariff Law of 1897, as "wool."

Arthur vs. Morrison, 96 U. S., 108, 110.
Von Stade vs. Arthur, 13 Blatch. (U. S.), 251.
Elliott vs. Swartwout, 10 Peters, 137, 151.
United States vs. Reiss & Brady (C. C. A.), 136 Fed. Rep., 741.
Robertson vs. Salomon, 130 U. S., 412, 415.
Hedden vs. Richard, 149 U. S., 346.

In *Von Stade vs. Arthur, 13 Blatchf. (U. S.), 251*, it was held that in the Tariff Acts the article "*bristles*" was separately classified and regarded as a different article from hair, and "bristles" were held not to be included in the general words "the hair of an animal."

On similar reasoning, in the case at bar, it may be held that "mocha hair," in commercial parlance and under trade understanding, is an article separate and distinct from "wool."

Elliott vs. Swartwout, 10 Peters, 96, tends to support our contention that the distinct article known in commerce under the denomination of "mocha hair" (and never as "wool") should not be classified as wool, especially as there is an enumeration in the free list sufficiently comprehensive to include it.

In *Elliott vs. Swartwout, 10 Peters, 137, 151*, the question for determination was whether certain "worsted shawls with cotton borders, and worsted suspenders with cotton straps or ends," "were or were not a manufacture of wool, or of which wool was a component part, within the meaning of the

words 'all other manufactures of wool, or of which wool is a component part,' in the second article of the second section of the Act of Congress of the 14th of July, in the year 1832."

Mr. Justice THOMPSON, who delivered the opinion of the Court, said:

> "It is stated in the point, as a fact, and to "be taken in connection with the question, "that worsted *is made out of wool by combing; "but that it becomes thereby a distinct article "well known in commerce under the denomi- "nation of worsted.*
>
> "Laws imposing duties on importations of "goods are intended for practical use and ap- "plication by men engaged in commerce; and "hence it has become a settled rule in the in- "terpretation of statutes of this description, "to construe the language adopted by the Leg- "islature, and particularly in the denomina- "tion of articles, according to the commer- "cial understanding of the terms used. This "rule is fully recognized and established by "this Court in the case of *The 200 Chests of "Tea*, reported in 9 Wheat., 438. The Court "there say the object of the duty laws is to "raise revenue, and for this purpose to class "substances according to the general usage "and known denominations of trade. Whether "a particular article was designated by one "name or another. in the country of its origin, "or whether it were a simple or mixed sub- "stance, was of no importance in the view of "the Legislature. It applied its attention to "the description of articles as they derived "their appellations in our own markets, in "our domestic as well as our foreign traffic; "and it would have been as dangerous as use- "less to attempt any other classification than "that derived from the actual business of "human life. It being admitted, in this case, "that worsted is a distinct article well known

> "in commerce under that denomination, we "must understand Congress as using the term "in that commercial sense, and as contra- "distinguished from wool, and woolen goods, "and other well known denomination of "goods."

And the Court held that the shawls and suspenders were not a manufacture of wool, or of which wool is a component part.

The case of *Elliott vs. Swartwout, 10 Peters, 137*, was approved and followed in

Seeberger vs. Cahn, 137 U. S., 95,

wherein the same restrictive meaning, so far as the tariff law was concerned, was given to the phrase "manufactures of wool."

In *United States vs. Reiss & Brady* (*C. C. A.*), *136 Fed. Rep., 741*, it was held that figs preserved in spirits or syrup, and with other fruits similarly preserved "known commercially as a class by themselves," were not dutiable as "figs." The Court, speaking through LACOMBE, J., said, at page 743:

> "We are further of opinion that the term "'figs' when used without qualifying descrip- "tive terms, in commercial significance means "the dried figs, commonly imported and sold "in baskets or boxes, which, like the other "dried fruits mentioned *eo nomine* in Para- "graph 264, plums, prunes, prunelles, raisins, "dates and currants—are not the preserved "fruits of Paragraph 263."

The same general principle is enunciated also by the Circuit Court of Appeals, First Circuit, in *Brennan vs. United States, 136 Fed. Rep., 743*, wherein it was held in effect that limes in brine, not being recognized in trade usage as limes,

should not be classified as limes under Paragraph 266, but were entitled to free entry rather as "fruits in brine, not specially provided for." The Court said, at page 745:

> "The record also shows by uncontradicted "evidence * * * that there has always "been in trade a distinction between limes "and limes in brine, to the extent that, if one "asked a merchant for limes, he would be "given fresh limes."

So in the case at bar, under similar reasoning, an article that is generally known, bought and sold in the trade in this country as "hair," or "mocha hair," for which provision is made in the free list, and which, according to the uncontradicted evidence, is not commercially recognized as wool, should not be classified under a provision covering wools of the third class, and camel's hair of the third class (*i. e.*, the hair of the Russian camel).

> *Hedden vs. Richard, 149 U. S., 346.*
> *Robertson vs. Salomon, 130 U. S., 412, 415.*

It is unnecessary to cite additional authorities that in the interpretation of tariff laws, commercial or trade usage and understanding are to be sought for as primary governing factors.

(B)

There is a clear distinction in the Tariff Law of 1897 between "wool" and "hair."

Paragraph 358 of the Tariff Act of July 24, 1897: reads as follows:

> "358. On wools of the third class and on "camels' hair of the third class the value

"whereof shall be twelve cents or less per "pound, the duty shall be four cents per "pound."

Hair of various kinds is separately provided for under Paragraphs 429, 430 and 571.

The repeated separate namings, and the various separate provisions in the Tariff Act of 1897 for "hair" and "wool" indicate that the framers of that law, at least in a tariff sense, considered that there was some difference or method of distinguishing between the two commodities, hair and wool.

Thus, by Paragraph 358 (the one under which the merchandise in controversy was classified) duty is imposed "on *wools* of the third class, *and* on *camel's hair* of the third class. It seems clear that the only kind of hair that Congress intended to provide for and make dutiable under Paragraph 358 was "*camels' hair of the third class.*" If they had intended the hair of any animals other than the Russian camel (such as the hair of the alpaca or of hair sheep), to be comprehended under this Paragraph 358, such intention undoubtedly would have been expressed by language similar to that used in Paragraph 350, where we find the following:

"350. Class two, that is to say, Leicester, "Cotswold, Lincolnshire, Down combing wools, "Canada long wools, or other like combing "wools of English blood, and usually known "by the terms herein used, and also *hair of "the camel, Angora goat, alpaca, and other "like animals.*"

It should be noted also that, while the various paragraphs of the wool schedule (K) differentiate wools and the hair of various animals, for dutiable purposes, Paragraph 360 specifies only "wools on

the skin," and makes no reference to hair of any kind. The logical inference from this seems to be that it was not the intention of Congress to impose duty upon *hair*, like this hair in question, when imported on the skin.

That Congress was warranted in distinguishing in the Act of 1807 between hair and wool is indicated by the evidence in this case, which clearly shows what constitute the differences according to trade understanding and practice between this mocha hair and wool (fols. 88, 103-104, 113-115, 126-127, 137-141, 188, 198-202).

The testimony of Souls (fol. 88), Klauder (fols. 103-104), Parkhurst (fols. 113-115), Simon (fols. 126-127). Weiler (fol. 188), Ritchie (fols. 198-202), and Government Examiner Kitching (fols. 137-141), all tends to support the proposition that the mocha hair or covering on the skins in question has not the wool fiber at all—that it is coarse, stubby, bristle like, having neither the "appearance" or "feel" of wool, which is "soft, pliable, curly"—that wool fiber can be pulled apart, and has a diffierent feeling and action entirely, also can be spun alone, while hair cannot; that wool has a curly fiber and the filaments will adhere to each other, whereas this mocha hair "separates as you shake it out and does not adhere, each fiber being separate"; that this mocha hair is kemp or dead hair—isn't commercially suitable for carding, though you "might work it with wool"—and that it "can only be used for stuffing and such purposes."

All of the testimony above summarized was introduced without objection, and is uncontradicted.

(C)

With respect to the value and use of the hair in controversy, the case at bar is quite similar to the case of

Keen Sutterlee & Co. vs. United States, Suit No. 2163,

quoted in T. D. 22831, G. A. 4872, decided by TOWNSEND, J., in the Circuit Court, for the Southern District of New York, wherein the question was as to the proper classification of the growth or "covering on skins taken from goats which are a cross between Cape of Good Hope and Persian or Turkish Angora goats, commercially known as Cape Bastard skins." In the Keen Sutterlee Co. case the Circuit Court said:

> "It (the growth on such Cape Bastard "skins) was neither wool nor hair of the char- "acter of the hair of the Angora goat, but was "a coarser hair, not suitable for spinning or "for any of the purposes for which wool or "Angora goat hair is used. The evidence "shows that the hair in this case in only used "for mixing with mortar, and is comparatively valueless";

and the Court accordingly held that said Cape Bastard skins imported with the hair thereon were entitled to free entry as skins, under Paragraph 605 of the Tariff Act of 1890. Almost the same statement as that above quoted, may be made concerning the growth or covering on the whitehead hair sheepskins here in question.

(D)

Congress never intended to impose a duty of over 100 per cent. on this commercially worthless material.

The evidence is is uncontradicted that the price of these sheepskins is not regulated or influenced at all by the quantity of hair on the skin, and that the hair is objectionable, and the more hair there is, the less money the merchandise will bring per pound (fols. 71-72); that the skins are bought solely for the pelt to manufacture leather out of the pelt, and that short haired skins are preferable (fol. 109); that in buying, no notice is taken of the growth, only the value of the pelt being considered (fol. 187).

The skins are sold to and used by tanners of glove leather and shoe leather (fols. 73, 112,113); and the tanners, after removing and washing the hair, sell it for stuffing purposes—for making sweat pads for horses, stuffing mattresses, etc. (fols. 92-93, 116-117, 121-122).

The evidence is uncontradicted that the covering on these skins, even after it is washed and taken off the skin, sells at wholesale for only from three to five cents per pound (fol. 109); that the hair is never long enough to be worth anything to tanners (fol. 186), and that the cost of removing the hair from the skins amounts to more than the hair sells for (fols. 185, 110).

Mr. Klauder, a tanner, testified as follows:

> "Q. What is the value of the labor that "you put upon this hair of the mocha sheep-"skin per pound?
>
> "A. The labor is in excess for what we get "for the hair, the labor in taking the hair off "the skin, and washing it, and drying it, does "not pay for the labor to take it off and "handle it—the price we get for the hair does "not pay for the labor" (fol. 110).

Mr. Ritchie testified that he "valued (the hair) washed and cleaned at four and one-half to five

cents a pound—that this would be the value of the hair removed from the skin and washed clean" (fols. 196-198).

Figuring even on the basis of what the hair sells for per pound, washed and cleaned after it is removed from the pelt—three to five cents—the imposed duty of three cents per pound is equivalent to nearly one hundred per cent. *ad valorem*. That, however, the duty of three cents per pound is greatly in excess of one hundred per cent. *ad valorem*, is shown by the fact that the cost of removing the hair from the pelts is more than the selling price of the hair.

Common goat hair, including mocha goat hair, is admitted free of duty (T. D. 18699 and T. D. 21739, G. A. 4595); yet according to the uncontradicted evidence in the case at bar, common goat hair is more valuable than the hair here under consideration (fol. 198), and it would seem to be inequitable, if not unlawful, to impose duty on the latter while admitting the former free.

It is not to be presumed that Congress intended to levy such an exorbitant duty upon commercially worthless material.

(E)

With due deference, it is submitted that the Circuit Court erred in holding that there was sufficient evidence before the Board to support the conclusion reached, and that such conclusion is also supported by the definitions in the encyclopedias and dictionaries.

The only iota of testimony in this entire record of eighty-two printed pages, which could in any way be construed as tending to support the Government's claim that the substance on these skins

is wool, is furnished by Government Examiner Kitching, pages 45 to 47, but *even he* tacitly admitted that the growth was not wool, when he testified both at folios 137 to 138 and at folio 141, that it was not commercially suitable for carding, but that "they can mix it *with wool* and card it." And he swore further on direct-examination (fol. 137) that the substance was more in the nature of hair than wool, and that if it were on a goat, he would pass it free as hair (fol. 136).

But even taking the testimony of Mr. Kitching in a light most favorable to the Government, and assuming for the purposes of this argument that it was as a wdole to the effect that the growth on Exhibit I was more in the nature of *wool* than in the nature of hair, it is still to be taken into consideration that we have as opposed to that, the *uncontrocerted* and *uncontradicted* evidence of eight other witnesses, including Mr. E. S. Parkhurst and Mr. George B. Ritchie, that the growth on Exhibit I is *not* wool, but "mocha hair," and that it would not constitute a good delivery under an order even for low grade wool.

Further, it may be noted that several *additional* witnesses, who did not testify before the Board of General Appraisers, were called on behalf of the importers for the Referee in the Circuit Court, and their evidence tended to show the manifest error of the Board's conclusion; we, therefore, respectfully urge that upon the entire record as it now stands, the only logical conclusion which can be arrived at is that the Collector erred in not classifying this merchandise under Paragraph 664 or 571 of the free list rather than under Paragraph 358 of the dutiable list.

Independent of commercial usuage, and of the fact that in trade, "mocha hair" has always been

deemed a separate and distinct commodity from wool of lower value, and used for entirely different purposes, and considered simply from the standpoint of common knowledge, it is evident from mere inspection, that the substance on Exhibit I, which is the subject of this appeal, is *not wool.*

In the Encyclopedia Brittanica (9th Ed., Vol. 24, p. 653), under the title of "Wool and Woolen Manufactures" it is said:

> "Wool is a modified form of hair, distinguished by its slender, soft and wavy or curly "structure, and by the highly imbricated or "serrated surface of its filaments."

And in the Century Dictionary, the following appears, in a sub-heading, under "wool";

> "Its (wool's) special distinction from hair, "depends in part upon the *kinks in the shaft* "*or fiber, but mainly upon the scales with* "*with which the surface is imbricated.*"

We respectfully submit that it may be fairly stated that none of the above named characteristics of wool are present or observable in the material here in question. The substance on Exhibit 1 (which, after being removed, from the skins, is used for stuffing purposes, for horse collars, etc.), plainly has nothing about it of a slender, soft and wavy nature; it has no kinky or curly structure, and the surface of its filaments is not highly imbricated or serrated.

We, therefore, conclude that according to the usual and common understanding of the terms, as well as under trade usage, this substance is hair, rather than wool, and that it should not be classified for duty under Paragraph 358 of the Tariff Act of 1897, which provides for *wools* of the third class, and *camels'* hair of the third class.

II.

The cases of Lyon vs. Marine, 55 Fed. Rep., 964, and T. D., 21,737, G. A. 4,593 are distinguishable from the case at bar, involving different issues.

The issue in the case of *Lyon vs. Marine, 55 Fed. Rep., 964*, cited by the Board of General Appraisers as authority for overruling these protests, was quite different from that involved in the case at bar.

In the Lyon case the question was whether certain fleeces of North China unimproved sheep, *composed of both wool and hair* and valued at nine cents a pound should be assessed for duty at eleven cents per pound (a rate equivalent to 133% *ad valorem*), under the provision of Paragraph 377 of the Tariff Act of 1890, covering:

> "hair of the camel, goat, alpaca, and other "like animals,"

or should be assessed for duty at 32 per cent. *ad valorem* under Paragraph 378 of that Act, as "wools of Class Three," the Court saying:

> "In the third class are placed the coarse "fleeces of the unimproved sheep of certain "South American States, Smyrna and Russian "camel's hair, and such coarse wools as have "been usually imported from Turkey, Greece, "Egypt, Syria, and elsewhere excepting im- "proved wools" (p. 965).

The Court upheld the importer's contention that a sheep, in respect to its fleece, was not a "like animal" to a goat, and decided that Para-

graph 378, rather than Paragraph 377, should govern.

From the decision in the Lyon case it may be observed, however, that no question was raised or claim made, as in the case at bar, that there was no wool in fact, or according to commercial understanding about the fleeces in controversy, and that the merchandise was entitled to free entry as "skins" or "hair."

According to the undisputed evidence, the question involved in G. A. 4593 was as to the proper classification of Jeddah sheepskins (represented by Illustrative Exhibit A), which come from a mountainous district of Arabia, and on which the growth of hair is much longer than on the mocha whitehead sheepskins in controversy (represented by Exhibit I), which come from Hodeida. This difference was clearly pointed out by the evidence, taken before the Referee in this case (fols. 178 to 183). Mr. Ritchie testified that both the growths on Exhibit I and Illustrative Exhibit A would be commercially known as hair, but that the growth on Exhibit A was "considerably better stuff," and would probably bring about ten to ten and a half cents a pound (fol. 202), while the growth on Exhibit I, although valueless in its imported condition, would, after it had been removed from the skin and washed and cleaned, be valued at four and a half to five cents a pound (fol. 196).

Mr. Weiler testified, and his testimony is uncontroverted, that the growth on the Jeddah sheep is longer and might be used for the purposes for which wool is used; while the growth on a Hodeida sheep is short and cannot be used for any purpose where wool is used, and that he would never think of protesting on Jeddah sheepskins (fols. 181-182).

III.

The fact that for many years prior to 1899 it had been the uniform practice of the Customs officials to admit merchandise like this in controversy free of duty, should have an important bearing upon the questions here involved.

From a published decision of the Treasury Department, rendered June 30, 1879, known as T. D. 4069, it appears that the Assistant Secretary of the Treasury then sanctioned the classification of so-called hair sheepskins (consisting of the pelts of sheep recently sheared), under the provision of the free list of the Tariff Act of June 6, 1872, enumerating,

> "Hides, raw or uncured, whether dry, "salted, or pickled, and skins except sheep-"skins with the wool on,"

basing his decision on the ground that the growth of wool or hair on the skins was of insufficient value to warrant its classification as wool.

Whether or not the practice of the Custom officials of returning mocha hair sheepskins free as rawskins began as early as 1879, we do not know, as we find no early decisions about the classification of mocha hair sheepskins; but T. D. 4069 seems to indicate that they may have been permitted free entry as early as 1879.

There is, indeed, positive evidence in this case, furnished by the testimony of Mr. Kitching, Government examiner, that skins like Exhibit I were formerly returned by him free, the hair as well as

the skin; that that was true when he first came, fifteen years prior to 1904—that is about 1889; but he could not say up to just what time that practice prevailed (fols. 134 to 135).

This is supplemented by the testimony of Mr. Helmrath to the effect that for many years prior to 1899 no duty was charged on merchandise like that in controversy, and that the Government practice in this respect changed in or about the year 1899, the evidence on this point being as follows:

> "Q. Is it or is it not true that for many "years prior to 1899 no duty was levied on "hair of whitehead sheepskins like Exhibit I?
> "A. That is the fact.
> "Q. So the Government practice has changed in or about 1899?
> "A. Yes, sir" (fol. 74).

See also folio 49, to the effect that the Goat & Sheepskin Import Company imported these skins for 15 years prior to March 3, 1903, and that they had *never been assessed for duty* as wool until the arrival of the lot per Manitou, November 18, 1899.

It, therefore, may be fairly assumed that under the latter years of the Tariff Act of 1883, and during all the time that the McKinley Act of October 1, 1890, and the time that the Wilson Tariff Law of August 28, 1894, and during the first three years that the Dingley Act of July 24, 1897, was operative, mocha whitehead hair sheepskins were allowed free entry.

During all that period of time from 1889 up to 1899 (save under the Tariff Act of 1894 when wool was on the free list), there had been continuously in force under the various Tariff Acts of 1883, 1890 and 1897, a specific provision for "wools of

the third class," corresponding to the provision under which duty was levied in the case at bar; and yet during all that time mocha whitehead sheepskins were classified free of duty as "skins, not otherwise provided for," and the growth on such skins was never assessed as "wool."

Where the language of the Tariff Acts has been substantially the same in respect to certain goods, the construction uniformly applied by the Treasury Department for many years will not be disregarded, except for very cogent reasons.

Merritt vs. Cameron, 137 U. S., 542, 552.
Robertson vs. Downing, 127 U. S., 607, 613.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals, for the Second Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled The Goat & Sheepskin Import Company, appellant, against The United States, appellee, to the end that the said case may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress, entitled "An Act to Establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3d, 1891, and that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem just and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals in the said case,

and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray.

Dated April 9th, 1906.

EDWARD S. HATCH,

J. STUART TOMPKINS,
Counsel for Petitioner.

Southern District of New York, }
State and County of New York, } ss.:

J. Stuart Tompkins, being duly sworn, says that he is counsel for the petitioner above named; that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

J. STUART TOMPKINS.

Subscribed and sworn to before me, this 9th day of April, 1906,

Henry J. Rodes,
(NOTARIAL SEAL.) Notary Public,
Kings County,
Certificate filed in New York County.

To
William H. Moody, Esq.,
Attorney General of the United States,
Washington, D. C.

Please take notice that on the 23d day of April, 1906, on the opening of the Court, or as soon thereafter as the matter can be heard, we shall move the Supreme Court of the United States, at the court room thereof, in the City of Washing-

ton, D. C., that the foregoing petition for a writ of certiorari be granted.

Dated New York, April 9th, 1906.

EDWARD S. HATCH,

J. STUART TOMPKINS,
Counsel for Petitioner.

Service of above notice and receipt of a copy thereof, together with copy of the petition, are hereby admitted at Washington, D. C., this 12 day of April, 1906.

[9318]

Henry M Hoyt
Solicitor General
H.

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No. 261.

In the Supreme Court of the United States

October Term, 1906.

GOAT & SHEEPSKIN IMPORT COMPANY,
Appellant,

against

THE UNITED STATES,
Appellee.

Brief for Appellant.

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J. STUART TOMPKINS,
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APPEAL PRINTING COMPANY, 14-16 VESEY ST., NEW YORK

IN THE

Supreme Court of the United States

GOAT & SHEEPSKIN IMPORT COMPANY, Appellant, against THE UNITED STATES, Appellee.	No. 261. October Term, 1906.

Brief for Appellant.

This cause is before this Court on a writ of certiorari allowed on the petition of the Goat & Sheepskin Import Company to review a decision of the United States Circuit Court of Appeals for the Second Circuit, sustaining an assessment of duty on certain importations of the appellant at the Port of New York.

The merchandise of the importations was skins of the mocha whitehead sheep, from Hodeida, Arabia, on which was a growth claimed by the importer to be hair, but returned by the collector as wool of the third class, on the skin, and assessed for duty at three cents per pound under the provi-

sions of Paragraphs 351, 358 and 360 of the Tariff Act of July 24, 1897. Those paragraphs are as follows:

> "351. Class three, that is to say, Donskoi, "native South American, Cordova, Valpa- "raiso, native Smyrna, Russian camels' hair, "and all such wools of like character as have "been heretofore usually imported into the "United States from Turkey, Greece, Syria and "elsewhere, excepting improved wools herein- "after provided for."
>
> "358. On wools of the third class and on camels' hair of the third class the value whereof shall be twelve cents or less per pound, the duty shall be four cents per pound."
>
> "360. The duty on wools on the skin shall be one cent less per pound than is imposed in this schedule on other wools of the same class and condition, the quantity and value to be ascertained under such rules as the Secretary of the Treasury may prescribe."

The importer duly protested against the classification, claiming that the merchandise was entitled to entry free of duty under Paragraph 664 of the free list of the Tariff Act, admitting without duty:

> "Skins of all kinds, raw (except sheepskins with the wool on), and hides not specially provided for in this Act."

In some of the protests the substance on the skins was also claimed to be free of duty under Paragraph 571, which reads:

> "Hair of horse, cattle, and other animals, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for in this Act; and human hair, raw, uncleaned, and not drawn."

It appeared that the substance on the skins, when washed and removed from the skins, sold for from three to five cents a pound, which was less than the cost of removing it. The assessment of duty was therefore about 100% ad valorem (fol. 37).

Before the Board of United States General Appraisers six witnesses testified on behalf of the importer, principally as to the character, use and commercial designation of the merchandise. Those witnesses were Mr. Helmrath, Secretary of the appellant corporation; Mr. Souls, a dealer in hair and wool, who had for eleven or twelve years handled an article like the growth on these skins; Mr. Klauder, for about seven years a tanner, and who had been in the wool dyeing buiness from 1878 to 1899; Mr. Parkhurst of the D. M. Smith Company, dealers in hair and wool, who had handled the substance for ninteen years; Mr. Simon, who had been engaged in the wool business in this country for thirty years, and Mr. Kitching, the government examiner, who made the return.

A sample of the skins on the growth of which the duty was assessed was offered in evidence as Exhibit I.

The Board of Appraisers overruled the protests on the ground that the question was the same as that involved in *G. A. 4593*, and on the authority of *Lyon* v. *Marine*, 55 Fed. Rep., 964, and held that the growth on the skins was properly classified as wool of the third class (fols. 50-51).

From the decision of the Board of Appraisers the importer duly appealed to the United States Circuit Court, for the Southern District of New York.

Before a Referee appointed by that Court, the

importer offered further the testimony of Mr. Weiler, manager of the importing corporation for about four years, and its foreign buyer for about thirteen years in Arabia and other foreign countries; and of Mr. Kitchie for twenty years an importer and wholesale dealer in wool and hair; and also offered in evidence a sample of the merchandise involved in *G. A. 4593*, produced from the office of the Board of General Appraisers, which was marked Illustrative Exhibit A.

No testimony was offered by the Government, the testimony of the above witnesses being in all respects uncontroverted.

The Circuit Court affirmed the decision of the Board of Appraisers in an opinion by TOWNSEND, J. (fols. 70-71). Their decision was sustained on a further appeal to the United States Circuit Court of Appeals, for the Second Circuit (fol. 84).

The importer thereupon applied to this Court for a writ of certiorari directed to the Circuit Court of Appeals, which was granted on the 1st day of May, 1906, and in this connection we respectfully direct the attention of the Court to pages 4 to 22 inclusive of our brief in support of the petition for a writ of certiorari.

POINT I.

The growth of the skins must be classified according to its commercial designation.

Hedden v. Richard, 149 U. S., 346, 348-349.

American Net and Twine Co. v. Worthington, 141 U. S., 468, 471.

Arthur v. Morrison, 96 U. S., 108.
Two Hundred Chests of Tea, 9 Wheat., 430, 438.
In re Wise, 73 Fed. Rep., 183, 188 and cases cited.

In American Net and Twine Co. v. Worthington, 141 U. S., 468, 471, this Court said:

> "It is a cardinal rule of this court that, in fixing the classification of goods for the payment of duties, the name or designation of the goods is to be understood in its known commercial sense, and that their denomination in the market when the law was passed will control their classification, without regard to their scientific designation, the material of which they may be made, or the use to which they may be applied."

In the case of *Two Hundred Chests of Tea*, *9 Wheat*, *430*, *438*, Mr. Justice STORY, writing the opinion of the Court, said:

> "Congress must be understood to use the word (bohea tea) in its known commercial sense. The object of the duty laws is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. Whether a particular article were designated by one name or another in the country of its origin, or whether it were a simple or mixed substance, was of no importance in the view of the legislature. It did not suppose our merchants to be naturalists, or geologists, or botanists. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic."

In *Hedden* v. *Richard*, 149 U. S., at pages 348-349, this Court said:

> "The language of commerce, * * * *particularly when employed in the denomination of articles*, must be construed according to the commercial understanding of the terms used."

When, therefore, in the schedule of the Tariff Act covering various grades of wool the Congress imposed a duty on wools of the third class on the skin, they must be understood as imposing that duty on an article known in commerce as wool, something that is wool according to the understanding of dealers in the article and the usages of trade, not on an article that is not wool, is never known as wool, and cannot practically be used as wool.

The evidence in this case is wholly uncontroverted that the substance of these Mocha white head-sheepskins, according to the general and uniform trade understanding, is not wool, but, on the contrary, is hair, and it follows that the collector's classification of the substance as wool of Class 3 was erroneous.

The Government failed to call a single witness to substantiate its claim. On the other hand the importers called six witnesses before the Board, and three additional witnesses in the Circuit Court, some of them well known and generally recognized as men of high standing and probity, and their combined evidence is wholly convincing that the substance or growth on these skins would not be and never has been recognized in the trade as wool, that on the contrary it has always been generally and uniformly bought and sold only under the name of "mocha hair," and is so known and recognized not only in commerce, but also according to common understanding; that it is used for pur-

poses other than those to which wool is applied—and that *this mocha hair would not be accepted as a good delivery under an order for even low grade wool.*

Testimony of:

Mr. Ritchie, fols. 199-202.
Mr. Souls, fols. 86-89.
Mr. Klauder, fols. 97-98, 101, 104.
Mr. Parkhurst, fols. 113-115, 117-119.
Mr. Simon, fols. 126-127.
Mr. Weiler, fols. 191-192.

The testimony of every one of the six commercial witnesses above referred to, it is submitted, strongly tends to prove that the covering on these low grade sheepskins on and prior to July 24, 1897, would never have been considered, accepted, or sold as *wool*, but on the contrary, it was on and prior to July 24, 1897, uniformly regarded, bought and sold at wholesale in the United States as hair.

We respectfully urge this general and uniform commercial understanding and usage, excluding this article from the category of merchandise regarded in trade as "wool," and including it in the category of merchandise known as "hair," should be taken into consideration tion and be given weight in determining whether or not this merchandise was properly classified by the Collector under Paragraph 358 of the Tariff Law of 1897, as "wool."

Chew Hing Lung v. Wise, 176 U. S., 156, 161.
Arthur v. Morrison, 96 U. S., 108, 110.
Elliott v. Swartout, 10 Peters, 137, 151.
Hedden v. Richard, 149 U. S., 346, 349.

It is not material that it is physically possible

to use the article for some of the purposes for which wool is used, or that it occasionally may be used for such purpose.

An occasional or possible use is not sufficient to affect the classification of an article for tariff purposes.

Chew Hing Lung v. Wise, 176 U. S., 156, 162.
Magone v. Wiederer, 159 U. S., 555.
Hartranft v. Langfeld, 125 U. S., 128.

As the rule was stated by this Court in *Hartranft v. Langfeld, supra*, the chief or principal use controls the classification, although the goods are sometimes used for other purposes.

And in Meyer v. Cadwalader, the Circuit Court of Appeals said that it was the chief or predominant use to which an article is applied that determines its classification, even though it might be "commonly, generally, and practically, and not merely exceptionally used for other purposes."

Upon the testimony it is undisputed that the article has not the appearance or any of the qualities of wool, and cannot practically be used as wool, but as a matter of fact is hair, and is so designated and dealt in commercially.

The object of the provisions of the wool schedule is not to impose a duty on the sheepskins, but to fix the duty on wool when it is imported on a skin. As the growth on these skins clearly is not wool, and is not commercially recognized as wool, its classification cannot be found in the wool schedule.

As the article is hair, and is so known commercially, and can only be so used practically, if

it is to be separately classified, it is free of duty as uncleaned, unmanufactured hair of animals, under Paragraph 571 of the Tariff Act, covering:

> "Hair of horse, cattle and other animals, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for in this Act."

POINT II.

The evidence establishes the fact that the growth on the skins is hair, and not wool.

The testimony taken in the case, both before the Board of Appraisers and the Referee appointed by the Circuit Court, which was uncontroverted, shows:

> 1. That the substance is commercially known as hair and dealt in under that designation, and never as wool.
>
> That the commercial designation is in accordance with the actual character of the article, because
>
> 2. It has none of the characteristics of wool.
>
> 3. It is not used as wool and is not suitable for the uses to which wool is put.

1. *The commercial designation of the article is hair.*

The witnesses who testified as to the commercial designation of the goods were all men who were thoroughly familiar with the article in trade and had had many years experience in handling it in their business.

The witness, Mr. Souls, testified that he sold

the article all over the country; that he bought and sold it under the name of Mocha hair, or hair, which was its general designation (fols. 29-30); that he also handled wool, and this article was never bought or sold as wool (fol. 29).

Mr. Klauder stated that he had been buying these skins from appellant for about six years (fol. 32), and removed the growth from them and sold it as hair, never as wool (fol. 33); that he also removed wool from skins and sold it, but this substance was never sold as wool (fol 34); he could not sell it as wool, because dealers would not accept it as wool (fol. 34). Everything on Exhibit 1 he would call hair (fol. 35).

Mr. Parkhurst stated that in handling the article for nineteen years he had always bought and sold it as Mocha hair (fol. 38), never under any other name (fol. 39). His business was general througout the country, and he never knew it to be called anything else (fol. 40). He stated that the stock of from 75 to 90% of the Mocha sheepskins imported was handled by his firm (fol. 38).

Mr. Simon testified that he always sold the substance as hair (fol. 42); it was always called hair or Mocha hair (fol. 42).

Mr. Ritchie said that he bought his goods all over the world and sold all through the country, and that the growth on these skins would be called a goat hair of a low grade (fols. 65-66). That a delivery of this article would not be a good delivery on an order for low grade wool, because it was not commericially known as wool by the people who use it (fol. 67); that he would not offer it as wool (fol. 68).

There is nothing in the record which would in any way tend to impeach or contradict this testimony.

2. *The article has not the appearance or characteristics of wool.*

From the undisputed testimony, which reference to the sample corroborates, so far as it describes the growth on the skins, it appears:

That the article has not the wool fibre (fol. 30); that hair has a smooth fibre, and wool a barbed fibre (fol. 30). It has none of the appearance or feel of wool (fol. 35). It has the hair fibre and none of the qualities or appearance of wool (fol. 39). The fibres of wool are curly and will adhere to each other; this article would not adhere, but would separate as it was shaken out (fols. 42, 44).

Mr. Kitching, the Government examiner, stated that there was quite a distinction between hair and wool and that the substance on these skins was "dead hair mostly, what they call dead hair or kemp" (fol. 46).

The commercial designation, therefore, conformed to the actual character of the goods.

3. *The substance is not used as wool, and is not suitable for such use.*

It appears from the testimony that the article is used mainly, or almost exclusively, by stuffing manufacturers, manufacturers for the saddlery trade and bed manufacturers (fols. 30, 31, 39, 41, 44, 66).

It is not used as wool becaused it is not suitable for such use.

Mr. Souls stated that it could be carded, as most anything can be (fol. 32); that while it might be made into yarn, it could not be spun alone (fol. 32).

Mr. Parkhurst said that it could not be used for spinning purposes, because it would not hold to-

gether; he thought some of it had been used for spinning purposes, with other stock, but not successfully (fol. 39).

Mr. Simon testified that it could not be spun because it would not adhere like wool (fol. 44).

The Government examiner stated that it could be carded, but there would not be much left after the carding; that it would "drop under the card most"; that it was not commercially suitable for carding (fol. 46).

The testimony of the witness Mr. Weiler was that the hair was coarse and would not card; that goat hair would be worth more than it and would be finer (fol. 64).

Mr. Ritchie stated that if the hair ran pretty white it was sometimes used in low carpet yarns. It could not be used for carding purposes, as it was all dead hair (fol. 66). There would not be any money in carding it, it was all kemp and would not take any dye (fol. 67).

While it thus appears that the hair might be carded, it is clear that it was not commercially adapted for such use. As one of the witnesses said, most anything can be carded; and if it were carded, it must have been carded as hair and not as wool. There is not only an utter absence of testimony that the article was fit for the uses to which wool is put, but it appears beyond dispute that it was not fit for such uses.

POINT III.

As the value of the goods is in the skins, without regard to the growth on them, they should have been assessed for duty as raw skins, not specially provided for.

Paragraph 664, under which it is contended the goods are provided for, reads:

> "Skins of all kinds, raw (except sheepskins with the wool on), and hides not specially provided for in this Act."

It appears as a matter of fact, upon uncontradicted testimony that the goods are imported for use in the leather trade; that the subject of the importation is the pelt, and that the growth on the skins is only an incident of the real article of merchandise. From a consideration of this paragraph, with Paragraph 571, it is clear that Congress intended to admit free all raw skins and the growth of all such skins unless it should be wool, whether it should be on the skin or imported separately.

From the testimony it appears that as the skins are imported the hair is of different lengths, and in the importation in suit the bales ran about one-third long hair, one-third medium and one-third short (fol. 22). The importers were required to pay duty only on the growth of the long-haired skins (fol. 24), and the rest were admitted free, although the price of the skin is not influenced by the quantity of hair on it; the more hair there is, the less the skin will bring, according to weight

(fol. 24). The more hair, the poorer the skin (fol. 24).

The skins are sold by the importer to tanners of glove and shoe leather just as they arrive (fols. 25, 38, 62).

While the witness, Mr. Klauder stated he removed the hair from the skins and sold it, he stated he bought the skins solely for the pelt, to manufacture leather from (fol. 37); that he paid about the same for the short-haired as for the long-haired skins (fol. 37). That after it was washed and removed from the skins the hair brought from three to five cents a pound, which was less than the cost of removing it (fol. 37).

Mr. Weiler stated that in buying the skins a buyer would calculate that on skins of this kind he would not get as much for the growth as the cost of removing it (fol. 62); that they would be worth no more with long hair on than with short hair; that in buying the skins they took no notice of the growth, their only consideration being the value of the pelt (fol. 63).

The merchandise is raw skins, and they are not elsewhere provided for in the Tariff Act. They are not excepted from Paragraph 664 because they are sheep skins, for to be within the exception they must have wool on; it is not sufficient that they are covered with a growth which is not wool.

POINT IV.

The Circuit Court of Appeals erred in not reversing the decision on the evidence.

The finding of the Board of Appraisers and the Circuit Court that the substance on the skins was wool was wholly unsupported by the evidence, and contrary to the evidence. It should, therefore, have been disregarded by the Circuit Court of Appeals, and the question determined upon the record.

Gabriel & Schall v. United States, 123 Fed. Rep., 296.
Apgar v. United States, 78 Fed. Rep., 332.
White v. United States, 72 Fed. Rep., 251.
Marine v. Lyon, 65 Fed. Rep., 992.

Instead of deciding the case in accordance with the facts appearing from the evidence taken before them, the Board of Appraisers assumed that the merchandise was the same as that involved in *G. A. 4593*, where they had held that the growth on certain sheepskins was wool, and followed their decision in that case, and the decision in *Lyon v. Marine* (55 Fed. Rep., 964). In *G. A. 4593*, the Board had found that the growth on the skins was used as carpet wool of a cheap grade (fols. 51 54).

Before the Referee appointed by the Circuit Court, a sample of the skins, the subject of *G. A. 4593*, was produced and admitted in evidence as Illustrative Exhibit A. It was examined by the

witness, Mr. Weiler, who had been for thirteen years foreign buyer for appellant, stationed in Arabia and other foreign countries (fol. 59). He stated he had bought large quantities of the skins like both Exhibit 1 and Exhibit A, and had been handling them for twenty years (fol. 59); that they were not the same kind of skin; that the hair on Exhibit 1 was shorter and of a different nature; that the two skins were from an entirely different breed of sheep (fol. 60). He said that they were both species of the Mocha sheep, but Exhibit A came from a mountainous country near Jeddah and was from a larger sheep, the average weight of the skin being 3 1/2 to 4 pounds, and about half of them were white and half black (fol. 60). Exhibit 1 was from a Hodeida sheep, smaller and lighter, the weight of the skin being about a pound and a half, and they were all white (fols. 60-61). That the appellant imported the Jeddah skins, but did not protest against the imposition of duty, as he considered the growth on those skins to be wool (fol. 61).

In *G. A. 4593* no claim was made under Paragraph 571.

The witness, Mr. Ritchie, stated before the Referee that Exhibit A had not the percentage of kemp in that Exhibit 1 had, and would bring probably 10 to 10 1/2 cents a pound (fol. 68). The price of the growth on Exhibit 1 had been shown to be 3 1/2 to 5 cents per pound.

In the case of *Lyon v. Marine*, the subject of the protest was an article worth about 9 cents a pound, and it does not appear from the decision how it was known commercially.

There was not one word of testimony before the Board of Appraisers on which to base its opinion

excepting the statement of the examiner that he returned the skins as sheepskins with the wool on because he found on them a substance that he called wool, which made up about 10% of the growth on the skins (fol. 47).

Even though the substance contained that slight percentage of what the examiner would call wool, it was shown that the substance was sold just as it came from the skins, no effort being made to separate it (fol. 44), and that as so sold it was commercially hair, and not wool.

On the record that was before the Board of Appraisers their decision was clearly so contrary to the evidence that it should have been reversed by the Circuit Court. But on the further evidence taken before the Circuit Court it appeared beyond question that while the Board of Appraisers had ignored the record and based their decision on their findings in another case, even that ground of their decision was untenable. But the Circuit Court said in affirming the Board's decision:

> "Inasmuch as there was sufficient evidence to support the finding of the Board as to the fact of wool upon the skins, and as the Court upon examination of the sample is unable to say that this finding is incorrect, and as the definitions in the encyclopædias and dictionaries support the claim that such a product is wool, although of a low order, the decision of the Board of General Appraisers is affirmed."

It is difficult to see where either in the testimony taken before the Board or before the Court's Referee, the Circuit Court found the evidence sufficient to support the Board's finding. "Wool" is one of the terms which has been expressly held by this Court to have a commercial meaning.

Cadwalader v. Zeh, 151 U. S., 171, 176.
Elliott v. Swartout, 10 Peters, 137, 151.

And it was to the evidence of people who handled the article commercially that the Court should have looked to determine whether or not the finding of the Board was correct, rather than to an inspection of a sample of the merchandise. The most careful examination of the evidence fails to disclose a scintilla of proof that commercially this article is wool, and under what this Court has termed "a cardinal rule" the article must be commercially wool or it is not wool for tariff classification. It was not necessary or permissible for the Court to resort to encyclopædias and dictionaries where the article was commonly dealt in under a well-known designation that was general throughout the trade. The commercial not the technical designation is of first importance in determining the classification, and there was no dispute as to what the commercial designation was. Although if it had been necessary to resort to the technical definition it clearly appears that the article had none of the physical characteristics of wool.

A decision so irreconcilably in conflict with the evidence it was the duty of the Circuit Court of Appeals to reverse. It is only where there is a great conflict of testimony that the findings of the Board of Appraisers and the Circuit Court should not be disturbed on appeal.

In *re Van Blankenstyn*, *supra*, the Circuit Court of Appeals said that when a finding of fact by the Board of Appraisers was wholly without evidence to support it, "or when it is clearly contrary to the weight of evidence," it was the duty of the Circuit Court to disregard it.

In *Apgar v. United States*, 78 Fed. Rep., 332, at page 334, the Circuit Court of Appeals said:

> "In a proper case, no doubt, this Court may go back of the decision of the Board of General Appraisers and the Circuit Court, and review the case upon the evidence, and, if need be, overrule their decision. But it requires a clear case to enable the Court to do that. This Court ought not, and will not, review a finding of facts made by the Board of General Appraisers and *not controverted by new evidence in the Circuit Court*, except it be manifest that the decision of the Board of Appraisers is *unsupported by the evidence, or is clearly against the weight of evidence.*"

It would be difficult to imagine a case where the findings of either the Board of Appraisers or the Circuit Court were more clearly "unsupported by the evidence" or "against the weight of evidence."

In *Gabriel & Schall v. United States*, 123 Fed. Rep., 296, the Circuit Court of Appeals held that where the testimony as to commercial designation was "so closely balanced as to make it difficult to say on which side lies the weight of evidence," the finding of the Board of Appraisers would not be disturbed.

No such difficulty is presented here. The testimony as to commercial designation was not only not closely balanced, but there was not the slightest conflict in the testimony.

On a review of the facts the Circuit Court of Appeals must inevitably have found that according to its commercial designation the growth on the skins was not wool, and was not dutiable under the wool schedule, but that it was commercially hair, and free of duty, either as incidental to the raw skins, or as uncleaned and unmanufactured hair.

In the decision of the case the commercial designation of the merchandise was ignored, and the

article seems to have been held to be wool solely because it grew on a sheep, although in the decision *Lyon v. Marine* it was said that the Court would take judicial notice of the fact that part of the growth on sheep is hair and not wool. In this case even the Government examiner conceded that 90 per cent. of the growth was hair. The admixture of 10 per cent. of what he called wool, and at most a low grade of wool, did not make the article commercially wool. The examiner testified that he had formerly passed the skins as free (fol. 45). The appellant had been importing the skins since 1892 and no duty was imposed on the growth on them until 1899 (fol. 22). What led to the change in the practice as to classification the examiner was not permitted to state.

It appears, however, from the combined testimony of Mr. Kitching (fol. 45), and Mr. Helmrath (fol. 25), that skins like Exhibit 1 including the growth thereon were passed free of duty, at least from the time that Mr. Kitching first became examiner, 15 years prior to 1904 (*i. e.*, in 1889), up to about 1899.

During all that period of time from 1889 up to 1899 (save under the Tariff Act of 1894 when wool was on the free list), there was continuously in force under the various Tariff Acts of 1883, 1890 and 1897, a specific provision for "wools of the third class," corresponding to the provision under which duty was levied in the case at bar; and yet during all that time, embracing four different tariff laws, Mocha whitehead sheepskins were continuously and uniformly classified free of duty as "skins, not otherwise provided for," and the growth on such skins was never assessed as wool.

We respectfully urge, therefore, that this is a

clear case, not only for the application of the well settled rule of commercial designation, but also for the application of the rule laid down in

Robertson v. Downing, 127 U. S., 607, 613,

that where the language of various tariff acts has been substantially the same with respect to certain goods, the construction uniformly applied by the Treasury Department for many years will not be disregarded except for most persuasive reasons.

See, also:

Proctor v. United States (C. C. A.), 145 Fed. Rep., 126, 132.

Brennan v. United States (C. C. A.), 136 Fed. Rep., 743, 749.

POINT V.

The decision of the Circuit Court of Appeals should be reversed, and the cause remanded with instructions to the Circuit Court to enter judgment in favor of the appellant.

Respectfully submitted,

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IN THE

Supreme Court of the United States.

THE GOAT AND SHEEPSKIN IMPORT COMPANY,
Petitioner,
against
THE UNITED STATES.

No. 361. 261.
October Term, 1906.

REPLY BRIEF FOR PETITIONER.

EDWARD S. HATCH,
J. STUART TOMPKINS,
Of Counsel for Petitioner.

APPEAL PRINTING COMPANY, 32-34 VESEY STREET, NEW YORK

IN THE

Supreme Court of the United States

THE GOAT AND SHEEPSKIN IMPORT COMPANY, Petitioner, against THE UNITED STATES.	No 261. October Term, 1906.

Reply Brief for Petitioner.

I.

Our opponent contends in Point I of his brief that "under the wool paragraphs of the tariff act the word 'wool' is manifestly used *in a generic sense to describe the fleece of the sheep.*" But there appears to be the following objections to the acceptance of that theory:

1. This theory is evidently based upon a mistaken belief or understanding as to the rules of law as laid down by this Court, to wit: upon the belief that terms in tariff acts may be interpreted according to some "generic" meaning, different from either their commercial meaning or their common meaning.

As Mr. Justice BRADLEY said, delivering the

opinion of the Court in *Robertson* v. *Solomon*, *130 U. S., 412, 415.*

> "The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of the tariff laws (citing cases). But if the commercial designation fails to give an article its proper place in the classification of the law, then resort must necessarily be had to the common designation" (130 U. S., p. 415),

and that rule as Judge LACOMBE said in *In re Herrman* (C. C.), *52 Fed. Rep., 941-944*, has been "reiterated over and over again." Thus it has been reiterated in the following cases:

Swan v. Arthur, 103 U. S., 597, 598.
Nix v. Hedden, 149 U. S., 304, 306.
Seeberger v. Cahn, 137 U. S., 95.
Hedden v. Richard, 149 U. S., 346.
Lutz v. Magone, 153 U. S., 105.
Saltonstall v. Wiebusch, 156 U. S., 601.
Sonn v. Magone, 159 U. S., 417.
Patton v. United States, 159 U. S., 500.
United States v. Goldenberg, 168 U. S., 95.
United States v. Buffalo Natural Gas Fuel Co., 172 U. S., 339.
Chew Hing Lung v. Wise, 176 U. S., 156.
Hempstead v. United States (C.C.A.) 122 Fed. Rep., 538.

Moreover if the interpretation asked by the Government were to be adopted, it would sanction the taxation of certain merchandise as wool that was neither wool according to trade usage nor in fact

according to common understanding; because according to the definition quoted by the learned Attorney General, notably that on page 7 of his brief, a sheep's coat contains *both* wool and hair, the statement there being that:

> "Many of the mammilian animals have both wool and hair, but only in a very few is the wool in greater abundance than the hair proper. Chief of these is the sheep."

2. Our opponent contends on pages 10 and 11 of his brief that the generic use of the terms wool and hair (as referring respectively to the coat of the sheep on the one hand, and the coat of the camel goat and similar animals on the other) began "as far back as the tariff act of March 2, 1861"; but this claim does not seem to be borne out by the statutes, because in the tariff act of March 3, 1883 (22 Stat., c. 121), in the free list, Paragraph 719, as well as in the tariff act of October 1, 1890, Paragraph 605 of the free list, there was a provision for "Angora goat skins, raw, without the wool" (and this same provision for the free entry of "Angora goat skins raw, without the wool" appeared in the Revised Statutes, Section 2505, Paragraph 702, which was in force previous to the enactment of the tariff law of 1883)—which shows that in those enactments at least the growth on certain goat skins was treated and referred to for tariff purposes as wool and not as hair, and hence that Congress could not have used the term wool in those statutes in the "generic or racial" sense contended for by the Attorney General, as referring exclusively to the sheep's coat (see Treasury Decisions, Nos. 7544 and 18699).

3. From the Government standpoint this might

prove a disadvantageous theory to adopt, because it would make the provisions in paragraphs 354 and 355 for scoured and washed wools applicable *only* to the wools of the sheep, and would allow scoured or washed Angora goat hair or alpaca hair to come in at the low rate provided for similar hair *unwashed*.

It may be noted also that the word "wools," as used in Paragraph 360 has been construed by the Treasury Department to refer not only to the wool of the sheep but also to Russian Camels hair, Angora goat hair, etc., when imported *on the skin*.

Thus, according to T. D. 18834, the Secretary of the Treasury sanctioned the practice prevailing at the ports of New York, Philadelphia and Boston to apply the phrase "wools on the skin" to Angora goat hair when imported on the skin.

4. If it had been feasible or possible to have the hair removed by the Arabian shippers by the requisite lime soaking and drying or other process, before the goods were exported, it seems reasonably certain that this would have been done years ago, in order to avoid not only the payment of extra freight, but also to avoid the payment of duty upon commercially worthless material; hence it seems fair to assume that such removal of the hair in Arabian (whether by reason of the wildness of the country or lack of machinery facilities, or for other reason) has proven commercially impracticable.

If the Government's novel contention is sustained, then not only the pelt coverings, now taxed, but also those which are at present and which for a great many years have been admitted

free, will have to pay duty in the future, and it is manifest that with the scope or operation of duties on these raw materials, that are sold exclusively to tanners of shoe leather and glove leather, thus broadened and extended to embrace *all* the growth on these pelts, even though it be concededly hair, the burden of the extra duty would fall largely upon the buyers and users of the pelts, that is, upon the domestic shoe manufacturers and glove manufacturers, for the same reason that the burden of the duties charged in this case fall largely upon them. A decision, therefore, upholding the "generic" theory urged by the government, would, we believe, be disastrous to the shoe and leather trade of the country, which deserves encouragement and which already feels the burden of, and is encountering difficulties under, the present tariff, perhaps more than any other industry.

5. Reference to later paragraphs of the wool schedule, to wit., Paragraphs 365, 366, 367, 368-9, 370, 371 and 372-381, 382, wherein provision is made respectively for "*yarns* made wholly or in part of wool," "*cloths*, and *knit fabrics*, made wholly or in part of wool," "*blankets* and *flannels for underwear* composed wholly or in part of wool," "*women's and children's dress goods, coat linings, Italian cloths and goods of similar description and character* composed wholly or in part of wool," *clothing, ready made, and articles of wearing apparel* of every description, including *shawls, whether knitted or woven* and *knitted articles* of every description * * * *felts* * * * composed wholly or in part of wool," "*webbings, gorings suspenders, braces, bandings, beltings, bindings, braids*, galloons edgings, insertings,

flouncings, fringes, gimps, cords and tassels, laces, embroideries, etc. * * * made of wool or of which wool is a component part," "*carpets*," of various kinds, "*mats, rugs for floors, screens, covers, hassocks, bed sides, art squares, and other portions of carpets or carpeting*, made wholly or in part of wool," sheds a great deal more light on what Congress meant by the words wool and wools as used in the Act than does the ingenious academic theory about the "GENERIC" meaning of those words. We respectfully urge that the wording of these later paragraphs in the wool schedule *tends strongly* to prove that what the legislative branch of this government intended to tax as wool, was not a sheep's coat as such, but rather that material which was suitable for use and used for the manufacture of the various articles named, such as blankets, women's and children's dress goods, carpets, etc.

This view of the matter seems to be supported also to some extent by the authorities referred to by the Government as authority, for its position. Thus in the Century Dictionary it is said:

> "The wool or fleece of the sheep furnishes the most important material for clothing in all cold and temperate climates. The felting property from which wool derives its chief value and which is its special distinction from hair, depends in part upon the kinks in the shaft or fibre, but mainly upon the scales with which the surface is imbricated. * * * Wool when shorn is divided into two classes, short wool or carding wool, seldom exceeding a length of three or four inches, and long wool or combing wool, varying in length from 4 to 8 inches, each class being sudivided into a variety of sorts * * *."

In the Standard Dictionary, the definition of wool contains the statement that it is "used chiefly in the manufacture of clothing;" then appears the following:

> "Next to cotton, wool is the most important textile material. As a raw product it varies greatly in length of fibre and firmness of texture, according to the animal from which it is taken. It is prepared for use by sorting, cleaning, oiling and picking, combing or carding, etc., and is then made *either into felt, woolen yarn and cloth, or worsted yarn and cloth.* * * * *Among commercial wools of importance are those obtained from the alpaca* (see Alpaca), *the Llama, the Angora goat,* the camel, and from the cashmere goat of the Himalayas."

The growth on the skins in question is not used as a textile material—nor is it "prepared for use by sorting, cleaning, oiling and picking" but on the contrary, it is prepared by being put by tanners in a lime vat for two weeks, then the hair is taken off the skin, and merely dried and sold in that condition (Rec., p. 17).

6. G. W. Bond who prepared the cabinet of standard samples of wool, in his report to the Secretary of the Treasury on the "classification of *wool*" refers, as pointed out in the Government's brief, top of page 12, to the "three uses" of "wools," viz., *clothing, combing* and *carpet;* and it is manifestly upon the theory that the hair of the camel, Angora goat, and alpaca are respectively fit for carpet and combing purposes that they are classified and taxed with the same duties as other carpet wools and combing wools.

This general intent is further indicated by the fact that although in the paragraph of the Act of 1883, under which *Cooper v. Dobson*, *157 U. S.*, *148* arose, Congress provided for *all* hair of the goat, it limited the corresponding provision in the class 2 combing wool schedule of the tariff act of 1897, *i. e.*, in Paragraph 350, to

> "Class two, that is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the camel, *Angora* goat, alpaca and other like animals,"

thus clearly indicating an intent to avoid the taxation of common goat hair as wool—evidently upon the theory that Angora goat hair was the only kind of goat hair that was suitable or used for wool purposes.

Moreover, it has been held by the Board in *T. D. 22831*, *G. A. 4872* and in *T. D. 26610*, *G. A. 6113*, and is now settled law that common goat hair, unfit for spinning purposes, is entitled to free entry under the present tariff act. When common goat hair is imported on the skin the free classification is made under Paragraph 664, and when such hair is imported separately it is passed free under Paragraph 571.

T. D. 22831, *G. A. 4872*.
T. D. 26610, *G. A. 6113*.

The only kind of *hair* that Congress enumerated as dutiable at 3 cents per pound under Paragraphs 351, 358 and 360 of the Tariff Act of 1897, was Russian camels hair.

This article in controversy is clearly not Russian camels hair, but, according to the decided prepon-

derance of evidence, is mocha hair, and therefore (unlike the goat hair in the Cooper v. Dobson case) it is not enumerated in the dutiable list, but is comprehended in the clause of the free list, Paragraph 571, relating to hair "not specially provided for."

There is no "perhaps" about some of the protests claiming under Paragraph 571, because that is the fact, and the Board specifically so found (Rec., p. 28, fol. 50).

Our contention that not only the clearly established trade denomination of this merchandise, mocha hair, and the evidence that it would never constitute a good delivery under an order for wool of any kind, but also its commercial adaptability or non-adaptability to wool uses should be considered in determining whether it is classifiable in the wool schedule, seems to be given some support by the decision of the Circuit Court of Appeals, Second Circuit, in the case of *United States v. Bennett, 66 Fed. Rep., 299.* There it was held, that raw angora goat skins with the hair on, being *for all commercial purposes* undressed fur skins, it being *unprofitable to separate the hair from the skins and to use the hair as wool*, should not be classified as "wools on the skin" under Paragraph 387 of the Tariff Act of 1890, but were free of duty under Paragraph 588 of that Act as "fur skins not dressed in any manner.

II.

It should be noted that the decision of the Board of General Appraisers in the case at bar (opinion by McClelland, G. A.) appears on page 28 of the record, and that by the additional testimony taken

in the Circuit Court (pages 32-39) it was clearly proven, as we claim, that the decision of the Board of General Appraisers (known as in *re* Littauer Bros., G. A. 4593), which is printed as an exhibit on pages 29 to 31 of the record was irrelevant, for the reason that it related to a different commodity, which was admittedly suitable for wool uses, and which, altho imported by the petitioners in this case was never protested on by them.

III.

In answer to the argument for the Government that the word "wool" or "wools" as used in the tariff law is generic, and that it should not be interpreted according to either any commercial or trade meaning or its ordinary meaning, it seems necessary to cite merely

Cadwalader v. Zeh, 151 U. S., 171, 176,

wherein a list of various articles was given which had been construed to have a commercial meaning —including United States v. Casks of Sugar, 8 Pet., 277; "sugar," and "syrup," "wool" and "worsted," *Elliott v. Swartwout, 10 Pet., 137.*"

In *Ernshaw v. Cadwalader, 145 U. S., 247*, inquiry was directed to what was the "known commercial signification of iron ore."

IV.

The wording of Paragraph 351, upon which our opponent seems to lay so much stress, reads:

> "Class three, that is to say, Donskoi, native South American Cordova, Valparaiso, native Smyrna, Russian camel's hair and all such wools of like character *as have been heretofore*

usually imported into the United States from Turkey, Greece, Syria and elsewhere, excepting improved wools hereinafter provided for."

The word heretofore means, of course, previously to July 24th, 1897; and the fact, as shown by the undisputed evidence in this case, that for many years prior to that date named, merchandise precisely like that in controversy had never been classified as "such wools," shows that in the opinion of the astute customs officials (if indeed it does not amount to an admission on their part and on the part of the Treasury Department that, the growth on Mocha Whitehead Sheepskins was not such wools of like character as had been imported before July 24th, 1897.

And it is a persuasive, or (it might perhaps be truthfully said) a conclusive indication, that **Congress, in framing the provision in the Act of 1897, for "wools of like character as have been heretofore usually imported, etc.," did not intend it to embrace the growth on mocha whitehead sheepskins which had not theretofore been classified as wool of any kind.**

The provisions of the Tariff Acts of 1873 and 1890, corresponding to Paragraph 351 of the 1897 Act above quoted, which were in force during the period that the substance of Mocha Whitehead Sheepskins was admitted free, were as follows:

Act of 1883, Schedule K:

> "Class three, carpet wools and other similar wools—such as Donskoi, Native South American Cordova, Valparaiso, Native Smyrna, and including all such wools of like character as have been heretofore usually imported into the United States, from Turkey, Greece, Egypt, Syria and elsewhere."

Act of 1890, Paragraph *378:*

> "Same as provision in Act of 1883, where quoted, with the added words 'excepting improved wools hereinafter provided for.'"

Where language used in former Tariff Acts has received a uniform and consistent interpretation by the department of the Government charged with the execution of the law (in this case the Treasury Department) and Congress in framing new legislation repeats the language of the prior Acts, it will, in the absence of some more controlling consideration, be presumed to have used the language in the meaning and charged with the construction which has been given to it by the executive department.

Schell v. Fauche, 138 U. S., 572.
Robertson v. Bradbury, 132 U. S., 493.
U. S. v. Dean Linseed Oil Co., 87 Fed. Rep., 456.
Anglo Cal. Bank v. Sec'y of Treas., 76 Fed. Rep., 750.
U. S. v Wotten 50 Fed Rep., 694.
U. S. v. Johnston, 124, U. S., 236, 253.
U. S. v. Hill, 120 U. S., 169, 182-3.
U. S. v. Philbrick, 120 U. S., 52, 59.
Five per cent Cases, 110 U. S., pp. 484-5.
Hahn v. U. S., 107 U. S., 406.
Brown v. U. S., 113 U. S., p. 571.

Also cases cited on page 21 of our main brief.

Dated New York, April 20, 1907.

Respectfully submitted,
EDWARD S. HATCH,
J. STUART TOMPKINS,
Of Counsel.

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No. [redacted]261

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

GOAT AND SHEEPSKIN IMPORT COMPANY, PETITIONER,
v.
THE UNITED STATES, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

GOAT AND SHEEPSKIN IMPORT COMPANY, petitioner,
v.
THE UNITED STATES, RESPONDENT.
No. 704.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITON.

The question involved in this case was one of fact—whether the hides of what are known as mocha sheep have wool on them or only hair. The Board of General Appraisers, the Circuit Court, and the Circuit Court of Appeals united in denying the contention of the petitioner, and there seems no occasion to discuss the correctness of the result.

The matter involved is not of any special importance, and certainly appears not of sufficient general interest to require a review by this court.

HENRY M. HOYT,
Solicitor-General.

27512—06

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No. 261.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE GOAT & SHEEPSKIN IMPORT COMPANY,
PETITIONER,

v.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

29933—07

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE GOAT & SHEEPSKIN IMPORT COMPANY, petitioner,
v.
THE UNITED STATES. } No. 261.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This case involves the dutiable classification of the fleece on the skins of certain Mocha sheep, imported from Hodeida, Arabia, which was classified by the collector as wool on the skin of the third class and assessed for duty at 3 cents per pound under the provisions of the tariff act of July 24, 1897.

The paragraphs of the act which are involved are as follows:

> 348. All wools, hair of the camel, goat, alpaca, and other like animals, shall be divided, for the purpose of fixing the duties to be

charged thereon, into the three following classes:

351. Class three, that is to say, Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camel's hair, and all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Syria, and elsewhere, excepting improved wools hereinafter provided for.

352. The standard samples of all wools which are now or may be hereafter deposited in the principal custom-houses of the United States, under the authority of the Secretary of the Treasury, shall be the standards for the classification of wools under this act, and the Secretary of the Treasury is authorized to renew these standards and to make such additions to them from time to time as may be required, and he shall cause to be deposited like standards in other custom-houses of the United States when they may be needed.

358. On wools of the third class and on camel's hair of the third class, the value whereof shall be twelve cents or less per pound, the duty shall be four cents per pound.

360. The duty on wools on the skin shall be one cent less per pound than is imposed in this schedule on other wools of the same class and condition, the quantity and value to be ascertained under such rules as the Secretary of the Treasury may prescribe.

In returning this merchandise no duty was assessed on the skins themselves, and only those fleeces

were assessed which upon examination were found to contain a high enough percentage of wool to be considered dutiable, those which were short and contained a smaller percentage of wool being passed entirely free. (R., 11, 26.)

The importer protested the collector's decision, claiming generally that the merchandise was entitled to entry free of duty as raw sheepskins without the wool on, under paragraph 664 of the tariff act (R., 8), and in some protests perhaps claiming alternatively that it was entitled to free entry as unmanufactured animal hair, under paragraph 571.

The collector's decision classifying the merchandise as wool on the skin of the third class was sustained by the Board of General Appraisers, the Circuit Court, and the Circuit Court of Appeals, successively.

ARGUMENT.

As the fleece in question is not one of the classes of wool specifically enumerated in paragraph 351, its classification thereunder depends upon whether it is a wool "of like character" within the provisions of the tariff act.

The importer conceded, and in fact proved, that the skins in question were those of a species of the Arabian Mocha sheep, but rested its case solely upon the claim that the coat upon these sheepskins was not wool within the meaning of the tariff act.

In support of this claim it made no effort to show that the fleeces in question were not "of like character" to Donskoi and other enumerated wools of

the third class, or did not correspond to the standard samples of wool of the third class deposited in the customs-house—the record being silent on this point—nor that at the time the act of 1897 was passed there was any fixed commercial meaning of either the term "wools" or "wools of the third class" or "wools of like character" to Donskoi and other third class wools, but relied upon testimony relating, *so far as commercial usage prior to 1897 is concerned, solely to this particular merchandise*, and which is claimed on page 9 of the brief for appellant to establish:

> 1. That the substance (was) commercially known as hair and dealt in under that designation, and never as wool. * * *
> 2. It has none of the characteristics of wool.
> 3. It is not used as wool and is not suitable for the uses to which wool is put.

While it is true that if "Mocha wool" had been specifically enumerated in the tariff act as an article subject to duty, proof that the merchandise in question was not included in the commercial meaning of the term "Mocha wool" would have excluded it from classification as such, it is submitted in behalf of the Government that the testimony on which the importer relies in reference to the commercial designation, character, and uses of the fleece of this particular kind of sheep is irrelevant and immaterial, for the following reasons:

I.

Under the wool paragraphs of the tariff act the word "wool" is manifestly used in a generic sense to describe the fleece of the sheep, as distinguished from the word "hair," which is used to describe the coat of the camel and other like animals, and not in a technical and commercial sense as referring only to that portion of the fleece of the sheep which possesses the specific qualities of wool as distinguished from those of hair.

In construing the wool schedule of the tariff act the following facts, of which the court will take judicial knowledge, are to be considered, namely: That all wool is, scientifically speaking, a form of hair; that while the coat of the sheep possesses in greatest degree the characteristic qualities of wool as distinct from those of hair, that that of many other animals, such as the alpaca, the Angora goat, and the camel, also possesses many of the technical qualities of wool, some of these other animals in larger degree than the lower grades of sheep; and that in the coat of all of these animals there is a variety of texture ranging from wool to hair, whose degree varies with the different kinds of animals and with their different species.

In Webster's International Dictionary the first definition of wool is: "The soft and curled or crisped species of hair which grows on sheep and some other animals, and which in fineness sometimes approaches fur." In the Century Dictionary it is defined as "the fine, soft, curly hair which

forms the fleece or fleecy coat of the sheep and some other animals, as the goat and alpaca, in fineness approaching fur;" and in the Standard Dictionary it is defined as "the soft and more or less long, curly, or crisped hair obtained from sheep and some allied animals, and used chiefly in the manufacture of clothing," and it is further stated that "in different animals wool shades by imperceptible degrees into hair, and that of the sheep simply represents an extreme case of the most desirable qualities, namely, fineness, kinkiness, and scaliness of the fiber, together with its length, strength, and luster, and the copiousness of the fleece, which consists entirely of wool, without hair; in all of which particulars the wool of the different breeds of sheep varies to a degree."

In the Encyclopædia Britannica (9th ed., vol. 24, p. 653), under the title of "Wool and woolen manufactures," it is said: "Wool is a modified form of hair, distinguished by its slender, soft, and wavy or curly structure, and by the highly imbricated or serrated surface of its filaments. The numerous varieties of the sheep are the most characteristic, as they are also by far the most important, producers of wool; but the sheep is by no means the only animal which yields wool employed for industrial purposes. The alpaca and other allied fibers obtained from the alpaca and its cogeners in South America, the mohair yielded by the Angora goat, and the soft, woolly hair of the camel are all wools of much industrial importance, while

the most costly wool in the world is that yielded by the Cashmere goat of the Himalayan Mountains. At what point indeed it can be said that an animal fiber ceases to be hair and becomes wool it is impossible to determine, because in every characteristic the one class by imperceptible gradations merges into the other, so that a continuous chain can be formed from the finest and softest merino to the rigid bristles of the wild boar."

In the work entitled "Wool and its applications," by Professor Archer, of the Edinburgh Museum of Science and Art, it is said: "Many of the mammalian animals have both wool and hair, but only in a very few is the wool in greater abundance than the hair proper. Chief of these is the sheep, next the Angora goat, then the llama, alpaca, vicuna, and the camel."

And in a report on the "Classification of wool," submitted to the Secretary of the Treasury by G. W. Bond, who prepared the cabinet of standard samples, and which was published in 1900 (Treas. Dec. No. 22681), in the general classification of sheep which he adopts, dividing them into ten distinct, original races, various of these species are specified as having hair, as, for example, the Shetland, "with fine, long hair;" the Zackel sheep, "all hairy," and the long-legged sheep, "most of them very hairy." (3 Treas. Dec., p. 1040.)

Bearing in mind, therefore, that no hard and

fast line can be drawn between sheep on the one hand and alpacas and other like animals on the other, in the matter of whether their coat is specifically wool or hair, it will be seen that Congress, in the wool paragraphs of the tariff act, did not attempt to classify the coats of these animals with reference to whether they consisted technically of wool or hair, and did not use these words as commercial designations or trade terms, but used the word "wool" broadly as describing the coat of the sheep, the most important and characteristic of the wool-bearing animals, and the term "hair" broadly as describing the coat of the alpaca and like animals.

The essential provisions of the statute are as follows:

By paragraph 348 it was provided that "*all* wools, hair of the camel, goat, alpaca, and other like animals" should be divided, for the purpose of fixing duties, into three classes; by paragraph 349, that class one should consist of wools of merino blood, down clothing wools, and other wools of like character, and all wools not included in classes two and three; by paragraph 350, that class one should consist of Leicester and other like combing wools of English blood and "hair of the camel, angora goat, alpaca, and other like animals;" and by paragraph 351, that class three should consist of Donskoi and other wools of like character and Russian camel's hair.

It was certainly intended by those provisions

that *all* wools and *all* hair of the camel, Angora goat, alpaca, and other like animals should be assessed for duty under one of these three classes; and it seems equally clear from the face of the statute that the term "wools" was used in its generic sense as equivalent to the coat of the sheep, just as the term "hair" was used in its generic sense as equivalent to the coat of the camel, alpaca, and other like animals; and that *Congress intended that the coat of all breeds of the sheep and of the camel, alpaca, and similar animal, which were deemed of sufficient commercial importance to be imported into this country, should be assessed for duty, and should be classified for that purpose, under one of the three classes mentioned*, by their race and blood, according to the breeds especially enumerated and their similitudes, and as determined by the standard samples deposited in the custom-house, and not with reference to whether their coat was technically or commercially to be regarded as "wool" or as "hair," and that it was no more intended that the fleece of any sheep should escape duty under one of these three classes because it might have the technical quality of hair and be commercially known as such, than it was that the hair of any camel, Angora goat, alpaca, or other like animal should escape duty because it might have the technical quality of wool and be known as such commercially.

That this was the sense in which the words "wool" and "hair" were used in the tariff act is

plainly shown by the subsequent paragraphs, as follows:

In paragraph 355 it is provided that "unwashed wools should be considered such as shall have been *shorn from the sheep* without any cleansing," and washed wools such as have been "washed with water only on *the sheep's back* or on the skin," etc.

In paragraph 356 it is provided that "the duty upon *wool of the sheep* or hair of the camel, Angora goat, alpaca, or other like animals, of class one and class two, which shall be imported in any other than ordinary condition, or which has been sorted or increased in value by the rejection of any part of the original fleece, shall be twice the duty to which it would be other subject;" and that "the duty upon the *wool of the sheep* or hair of the camel, Angora goat, alpaca, or other like animals of any class which shall be changed in its character or condition for the purpose of evading duty," etc., shall be twice the duty to which it would be otherwise subject.

And again in paragraph 664 of the free list there is excepted from duty raw skins of all kinds, "except *sheepskins with the wool on.*"

On referring to earlier tariff statutes, it will be found that this generic use of the terms wool and hair began as far back as the tariff act of March 2, 1861 (12 Stat., c. 68), in which it was provided, in the first clause of section 12, that "any wool of the sheep, or hair of the alpaca, goat, and other

like animals, which shall be imported in any other than the ordinary condition," etc., shall be subject to an increased duty, and a duty was also placed upon "sheepskins, raw or unmanufactured, imported with the wool on."

This reference to "wool of the sheep" and "hair of the alpaca" and other animals was repeated in section 4 of the tariff act of June 30, 1864 (13 Stat., c. 171); in section 1 of the act of March 2, 1867 (14 Stat., c. 197); in the act of March 3, 1883 (22 Stat., c. 121), and in paragraph 383 of the tariff act of October 1, 1890 (26 Stat., c. 1244).

Taking, therefore, all these various provisions from the tariff act of 1861 down to and including the act of 1897, it will be seen that the word "wool" was consistently and continuously used as describing the coat of the sheep, while the word "hair" was continuously and consistently used as describing the coat of the camel, alpaca, and other similar animals.

It is further evident that under the tariff act the classification of wools is by race and blood, rather than by the specific characteristics of the wool.

Thus, as shown by the report of G. W. Bond on the "classification of wools," which is cited above, in establishing the cabinet of standard samples the principle was recognized that the division made by the act "was by race or blood, and that no other practicable division could be made—the lines of

quality so subtilely run into one another, wools for all three uses, viz, clothing, combing, and carpet, being frequently found in the same flock, and even in the same fleece," . . . (3 Treas. Dec., p. 1038.)

And in Treas. Dec. No. 21737 it was said by the Board of General Appraisers:

> We may add that in establishing the standard samples of wool deposited in the principal custom-houses of the United States, under the authority of the Secretary of the Treasury, as authorized by paragraph 353 of the tariff act of 1897, and analogous paragraphs of previous acts, the principle of classification recognized is rather that of race and blood only, and not of use or adaptability, many wools of the first class being suitable only for carpets, and others are placed in the third class, from which a fair article of clothing could be made. (Wool and Wool Manufacturers, 1894, Ford, p. 269.)

The practice of the Treasury Department and the following decisions of the Board of General Appraisers and of the courts show, more or less directly, that the words "wool" and "hair" are used in the tariff acts in a racial sense, and that the product of the animals to which they refer are not to be taken out of their racial classification by proof of their technical quality, or nonadaptability to specific uses or commercial designation.

As early as 1880 it was ruled by the Secretary of the Treasury, in Treas. Dec. No. 4684, that Cashmere goat's hair could not be classified as wool of the third class or carpet wool, but was to be classified under the paragraph including "all hair of the alpaca, goat, and other like animals."

In *Lyon* v. *Marine* (55 Fed., 964 (C. C. A.)), decided in 1893, it was held that the fleece of an unimproved breed of the North Carolina sheep should be classified as "wool of the third class," under the act of 1890 (the classification under that act being practically identical with that under the act of 1897), although it contained a considerable admixture of hair. The court said:

> The writers on sheep * * * treat the hair which grows upon the bodies of unimproved sheep as the principal object to be removed by crosses with improved breeds. The native sheep of the United States, the native sheep of all countries, produce fleeces whose value is depreciated more or less by the undue quantity of hair contained in them * * *. One of the aims in improving native sheep by judicious crossing is to reduce the percentage of this deleterious product. The native sheep of the United States and of all countries named in paragraph 378 * * * have a moderate percentage of hair in their fleeces. This is common knowledge, taught by all textbooks on sheep and within the judicial cognizance of the courts * * *.

The policy of Congress was as simple as

> obvious. The finest grades of wool of short fiber, represented by the fleeces of the merino sheep and the sheep bred originally on the several downs of England, * * * are taxed 11 cents a pound. Wools of long fiber, from improved Cotswolds and like highly bred sheep, and the fine hairs of camels, alpacas, and goats of high breed, most of them exceeding in value the fine wools of the merino class, are subjected to the higher duty of 12 cents. Finally, wools and hairs from the sheep, described in paragraph 378, all more or less inferior in value to those of classes 1 and 2, * * * are subjected to an ad valorem duty equal to one-third their market value, whatever that may be.

In *Cooper* v. *Dobson* (157 U. S., 148), decided in 1894, arising under the tariff act of 1883, under which the classification of wools and hair was, broadly speaking, the same as that of the act of 1897, except that class one was entitled as "clothing wools," class two as "combing wools," and three as "carpet wools and other similar wools," it was held that common goat hair was properly classified under class two, even although it was proven to be unfit for combing purposes, and was similar in its adaptibility and uses to the hair of horses and cattle, and that it was not to be classified under the clause relating to "hair not specially provided for." The court held, Mr. Justice Shiras delivering the opinion, that the act—

> "all hair of the alpaca, goat, and other like animals" is subjected to a uniform duty of ten cents a pound, to whatever uses or purposes it is or may be adapted."

The opinion expressed in United States v. *Klumpp* (169 U. S., 206) *is, however, conclusive in its effect upon this point.* In this case, while it was held that the phrase "manufactures of wool," as used in the tariff act of 1894 in reference to a reduction of duties, included worsted dress goods made of wool, it was said that this phrase would not, however, include articles made of the hair of the camel and other animals, for the reason that while sheep's wool was a form of hair and while the Angora goat and other similar animals yielded a form of wool, nevertheless in the tariff act of 1890 and preceding years the wool of the sheep was distinguished from the hair of the camel and other like animals. Mr. Chief Justice Fuller, delivering the opinion of the court, said:

> Doubtless wool considered as the sheep's coat might be said to be the sheep's hair, and fleeces of the hair of the Angora goat, the llama, the alpaca, and other like animals, might be called their wool (p. 216).

And after setting forth the quotation from the Encyclopedia Britannica, which appears hereinabove, the opinion continues:

> But the acts of 1890 and 1894, as well as prior tariff acts, distinguished the wool of

> the sheep from the hair of the camel, goat, and other like animals as raw materials (p. 217).

As the paragraphs of the tariff act of 1897 relating to the classification of wools are identical, so far as this question is concerned, with the corresponding paragraphs in the act of 1890 and earlier statutes, it follows, logically, as a result of this opinion, that the words wool and hair are to be regarded in the act of 1897, as well as in the prior act, as used in a racial and generic sense, the term wool including the coat of the sheep, as distinguished from the term hair, including the coat of the camel, goat, and similar animals.

In Treas. Dec. No. 23179 (1901) it was held by the Board of General Appraisers that the growth of the Cashmere goat, *although claimed to be commercially known as "China brown cashmere wool,"* was nevertheless dutiable under class 2 "as hair of the camel, angora goat, alpaca, and other like animals." The Board said:

> "The testimony taken at the hearing . . . establishes the fact that the wool or hair of the Cashmere goat has heretofore, in customs practice, always been classified under analogous paragraphs of previous tariff acts, and that the article in question is identical in quality and character with the Government standard sample numbered 213, which was established under the authority of the Treasury Department, pursuant to the

power vested in the Secretary of the Treasury by paragraph 352 of the tariff act of 1897."

And in Treas. Dec. No. 26606 (1905) it was held by the Board of General Appraisers that wool imported from New Zealand which was shown by the evidence to be the fleece of the Leicester sheep and of English blood was properly classified as class 2 Leicester wool, although "known as New Zealand wool," and although some of the fleeces were shown to be of inferior quality.

II.

The rule of commercial designation is not applicable to the classification of wool.

1. It is well settled that where it appears from the statute itself that words in a tariff act are not used in a technical sense as a commercial designation or trade term, their meaning is not to be controlled by their commercial usage.

Maillard v. *Lawrence*, 16 How., 250;
Greenleaf v. *Goodrich*, 101 U. S., 278;
Barber v. *Schell*, 107 U. S., 617;
Newman v. *Arthur*, 109 U. S., 132;
Reimer v. *Schell*, 4 Blatchf., 328;
Roosevelt v. *Maxwell*, 3 Blatchf., 391;
Carson v. *Nixon*, 90 Fed., 409;
Patton v. *United States*, 159 U. S., 500;
Cadwalader v. *Zeh*, 151 U. S., 171;
United States v. *Klumpp*, 169 U. S., 209.

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In *Maillard* v. *Lawrence* (16 How., 250) it was held that certain worsted shawls were properly classified as "wearing apparel" and not as "manufactures of worsted," even if they were commercially known as "manufactures of worsted" and were not commercially known as "wearing apparel," on the ground that obviously Congress must be understood to have intended to include "every article which in its design and completion and received uses is an article of wearing apparel," and that the phrase "wearing apparel" being "familiar to all classes, grades, and occupations," and not novel or obscure, as a term of art, a commercial signification was not to be substituted for its established and popular meaning.

In *Greenleaf* v. *Goodrich* (101 U. S., 278, 284), in which it was held that the phrase "goods of similar description" was not a commercial term, Mr. Justice Strong, in delivering the opinion of the court, referred to *Maillard* v. *Lawrence*, *supra*, as "an instructive case," and said that it was "rested on the basis that 'wearing apparel' was not a technical term."

In *Cadwalader* v. *Zeh* (151 U. S., 171, 176) Mr. Justice Gray, in delivering the opinion of the court, again referring to *Maillard* v. *Lawrence*, stated that it was because of the peculiar language of the act of 1846, making the designed object and actual use the sole test, that the court had affirmed the judgment of the Circuit Court, and said: "In the Circuit Court Mr. Justice Nelson said that 'this phraseology, for the purpose of describing a dutiable article, was used for the first time in the act of 1846, and was

introduced for the purpose of describing a class of articles, not as known in trade and commerce, by any particular appellation, but by the actual use for which they were designed and to which they were adapted,' * * * and that 'Congress intended to depart from the commercial designation as the test to determine the description within which the duty should or should not be charged, and to leave such determination to the test of the actual use of the article.'"

And again, in stating in this opinion the settled rule of interpretation that the commercial meaning of words used in the tariff acts is to prevail, Mr. Justice Gray added (p. 176) the express proviso, "*unless Congress has clearly manifested a contrary intention.*"

Considering, therefore, the case of *Maillard* v. *Lawrence* in the light of the subsequent references in *Greenleaf* v. *Goodrich* and *Cadwalader* v. *Zeh*, the rule would seem to be fairly deducible therefrom, which is entirely consistent with later decisions, that as it was evident from the statute itself that the words "wearing apparel" were not used in a technical or trade sense, but rather in a general sense, as including all articles intended for wearing, its meaning was not to be controlled by technical commercial usage.

In *Barber* v. *Schell* (107 U. S., 617) it was held in reference to a provision imposing a duty on "cotton laces, cotton insertings" and "manufactures composed wholly of cotton," that the principle of *Arthur* v. *Lahey* (96 U. S., 112) and kindred cases,

that the specific designation by a commercial name will prevail over a general term in a later act, had no application. Mr. Justice Blatchford, delivering the opinion, said:

> The designations qualified by the word "cotton" in the act of 1846 are designations of articles by special description, as contradistinguished from designations by a commercial name or a name of trade. They are designations of quality and material. * * * This was the view applied by Mr. Justice Nelson in *Reimer* v. *Schell* (4 Blatchf., 328), in 1859, to colored cotton hosiery, under the provisions in question, and we think it a sound one. * * * *There is no question of commercial designation.*

In *Reimer* v. *Schell* (4 Blatchf., 328; Fed. Cas., No. 11676), referred to in the foregoing opinion, Nelson, circuit justice, said:

> The legislature designates the articles by special description, as contradistinguished from a designation by a commercial name; and the proper inquiry is as to their qualities and characteristics, with a view to ascertain if they come within the description. If they do, no argument can take them out of the rate of duty which has been imposed.

In *United States* v. *Klumpp* (169 U. S., 209, 216) it was held that as a provision imposing a duty on dress goods made of wool, worsted, or the hair of certain animals was a description addressed to the quality and material of the goods, the principle "that the

special designation of an article by its commercial meaning should prevail over general terms used in the same or a later act has no application."

In *Newman* v. *Arthur* (109 U. S., 132) it was held that certain cotton goods were to be classified as "manufactures of cotton" described by the number of "threads to the square inch," even although the threads in these goods were not counted in ordinary mercantile transactions and could not be counted by methods practiced by the trade, and that the rule of construing the statute in accordance with commercial use had no application because the language used was "unequivocal." Mr. Justice Matthews, delivering the opinion of the court, said:

> There is no reference in the statute, either expressly or by implication, to any commercial usage, and there is no language in it which requires for its interpretation the aid of any extrinsic circumstances. The rejected proof of the custom of merchants to rate certain descriptions of goods, as to values, by the number of threads to the square inch, as ascertained by inspection by means of a glass, throws no light whatever on the meaning of the law, because the law fixes the rate of duty by a classification based on the number of the threads in a square inch, without reference to the mode in which the count is to be made.

In *Patton* v. *United States* (159 U. S., 500), involving certain tops of scoured, unwashed wool, which had been broken up for the purpose of being imported as "woolen waste," but had been classified

by the collector as "scoured" wool of the first class, it was held that evidence of a commercial designation of the article as "woolen waste" was immaterial. Mr. Justice Brown, delivering the opinion, said:

> There is abundance of testimony to the effect that the article imported was not known commercially as "scoured wool;" but in the view taken by the court below, which we think was correct, this was immaterial. The act does not impose a duty upon scoured wool as such by its commercial designation, but provides that "the duty on wools * * * of all classes which shall be imported scoured shall be three times the duty to which they would be subjected if imported unwashed." In short, the act refers not to the commercial designation but to the fact whether the wool has been actually scoured or washed or is imported unwashed. If the wools have in fact undergone the process of scouring, they are properly classified as imported scoured, although they may not be known commercially as scoured wools.

It is never competent to control the meaning of a phrase used in the tariff act by proof of commercial usage when either the act itself or previous tariff legislation shows that it was intended to be used in a different sense.

In *De Forest* v. *Lawrence* (13 How., 273, 281), it was held that sheepskins with the wool on them, which had been classified under various tariff acts as wool on the skin but were not enumerated under the act

of 1846, were not to be classified under that act as "raw skins of all kinds," although this was their commercial designation. Mr. Justice Nelson, speaking for the court, said:

> The article has never been classed in any of the tariff acts under the designation of skins; but has been charged always, since it came under the notice of these acts, with a specific duty. * * * And, although it has been invoiced, and is known in trade and commerce, by the designation of sheepskin raw, * * * yet, having a known designation in the revenue acts, * * * we must regard the article in the light in which it is viewed by these acts rather than in trade and commerce. For, when Congress, in legislating on the subject of duties, has described an article so as to identify it by a given designation for revenue purposes, and this has been so long continued as to impress on it a particular designation as an article of import, then it must be treated as a distinct article, whether there be evidence that it is so known in commerce or not.

In *Roosevelt* v. *Maxwell* (3 Blatchf., 391), it was held that as an analysis of the tariff act of 1846 showed that window glass was intended to be included in the term "wares of glass," it should be thus classified, even although it was not included in the commercial meaning of this term. The court said:

> The commercial understanding of the term might be adopted if it did not appear, by

> the act itself, that a different meaning was intended by the lawmakers. And if it does appear, by the act itself, that a particular meaning was intended by the terms used, then that particular meaning should be adopted in giving a construction to the act, whatever the commercial meaning of the terms may have been. * * * It appears * * * by the provisions of the act, particularly when it is examined in connection with the act of 1842, that Congress intended to include within these general terms all kinds of window glass. Such being the intent of the framers of the law, as discovered from the law itself, that intent must prevail over any meaning of those terms as understood by commercial men, even if it had been proved that the latter meaning was in conflict with the former.

While it is true that many of the foregoing cases do not involve a state of facts identical with the present case, it is nevertheless true that the general principle which runs through all of them is that whenever it appears from an inspection of the tariff laws themselves that certain words in a tariff law, whether by reason of their non-technical character or their reference to quality or material, or from other provisions of the same or former laws, were not intended by Congress to be used as trade names in the commercial designation of articles, the rule of interpretation by commercial usage has no application; and hence, if the underlying proposition contended for by the Government be correct, namely, that it appears from the tariff act

itself that the term wool was not used as a trade name, but as descriptive of the coat of the sheep, it follows, under the principle of the foregoing cases, that the coat of a particular species of sheep is not to be excluded from classification as wool merely because it may not have been included within the trade meaning of that word.

2. General words of similitude, such as "goods of a similar description," are not words of commercial designation whose meaning can be controlled by proof that goods which are in fact of similar description have a different commercial classification.

In *Greenleaf* v. *Goodrich* (101 U. S., 278) it was held that certain dress goods were classified under a provision imposing a duty on certain woolen delaines and "goods of similar description" and that the importer was not entitled to an instruction to the jury that the goods were not to be so classified unless they possessed all characteristics which "were commonly understood among merchants as distinguishing goods known in commerce as of a similar description with delaines." Mr. Justice Strong, delivering the opinion, said:

> Reliance is placed upon the rule * * * that the commercial designation of an article among traders and importers, where such designation is clearly established, fixes its character for the purpose of the tariff laws. *But the present is not a case of commercial designation of articles. The phrase "of similar description" is not a commercial term,* and if

> it were, there is no evidence in the record to show what it is understood to mean among merchants and importers. In *Maillard* v. *Lawrence* (16 How., 251) we have an instructive case bearing upon this subject * * *. The case was rested on the basis that "wearing apparel" was not a technical term. Much less is the phrase, goods "of a similar description."

In *Schmieder* v. *Barney* (113 U. S., 645, 647, 648) it was held, following *Greenleaf* v. *Goodrich*, that certain Saxony dress goods were properly classified as "goods of similar description to delaines" within the tariff act of 1862, and that evidence that such goods were not commercially known as goods of similar description to delaines, but commercially belonged to the class of woven dress goods, was properly excluded by the trial court. Mr. Chief Justice Waite, referring to *Greenleaf* v. *Goodrich*, said that in that case—

> the real point for decision was whether goods must be commercially classified with delaines to make them of "similar description." It was there decided that if they were similar in product, in adaptation to uses, and in uses, they were of similar description, even though in commerce they might be classed as different articles. Upon that question the decision in *Greenleaf* v. *Goodrich* must be taken as conclusive.

So, in the case at bar, it is submitted that the controlling phrase, "wools of like character" to Donskoi and other wools of the third class, is not a commercial

designation of articles whose meaning can be controlled by proof that mocha fleeces have a different commercial classification.

3. The proof of commercial designation in the present case is in any event insufficient, for the reason that where an importer claims that certain specific articles are excluded by their commercial designation from a class mentioned in a tariff act, it is not sufficient for such purpose, even in those cases where the test of commercial designation is applicable, to show negatively that these specific articles were commercially known by another name and were not commercially known by the name used in the act, but it must be affirmatively proven that the words used in the act had at the time of its passage a definite and uniform meaning which excluded the specific articles in question. In other words, the proof of commercial meaning must not be addressed simply to the commercial designation of the particular article in question, as was done in the case at bar, but to the commercial meaning of the term used in the act.

Greenleaf v. *Goodrich*, 101 U. S., 278.
Schmieder v. *Barney*, 113 U. S., 645.
Claflin v. *Robertson*, 38 Fed., 92.
Carson v. *Nixon*, 90 Fed., 409 (C. C. A.).
Field v. *United States*, 90 Fed., 412 (C. C. A.).

The rule laid down in these cases is based upon the logical principle that the object of resorting to commercial designation is simply to determine *the*

meaning of the words used by Congress, and that when Congress has used given words in a statute they are held to include all articles coming within their ordinary meaning, unless it is shown that at the time the act was passed the words used by Congress, which are the only words whose interpretation is involved, had acquired in commercial usage a defined and limited meaning which excluded certain specific articles from classification thereunder.

In *Greenleaf* v. *Goodrich* (101 U. S., 278), in which it was held that the importer was not entitled to have the jury instructed that certain dress goods should not be classified as "goods of a similar description" to delaines unless they possessed all the characteristics which "were commonly understood among merchants as distinguishing goods known in commerce as of a similar description with delaines," the court, in addition to holding that the phrase "goods of a similar description" to delaines was not a technical term whose meaning could be shown by commercial use, further said:

> The record exhibits nothing tending to show what was commonly understood among merchants as distinguishing goods known in commerce as of a similar description with delaines from all other goods. Nor was there any evidence that there were any goods known by merchants or in commerce as goods of a similar description with delaines * * *.

In *Schmieder* v. *Barney* (113 U. S., 645, 648), likewise involving the classification of dress goods under the phrase "goods of similar description" to delaines, the importer contended that he had gone further in his proof than was done in the Greenleaf case and had offered to prove that in commerce these dress goods were not considered as of similar description to delaines, and argued that he had hence brought his case within the exception supposed to have been reserved in the Greenleaf case in the language above quoted. Mr. Chief Justice Waite, delivering the opinion, said:

> *The most that can be claimed for the alleged reservation in Greenleaf* v. *Goodrich* is *that it would have been proper to inquire whether the phrase "of similar description" was a commercial term, and, if so, what it was understood by merchants and importers to mean. That, however, is not what was attempted in this case.* The witnesses were asked, in effect, not what the words "of similar description" were understood among commercial men to mean, but whether the goods of these importers were known in commerce as goods of similar description to delaines.

In *Claflin* v. *Robertson*, 38 Fed., 92, 93, the importer, in order to show that by the rule of commercial usage certain imported fabrics woven out of cotton thread were not to be classified as "cotton laces" under the act of 1883, relied on testimony that these fabrics were known in commerce only by

the name of mosquito net, hamburg net, and the like, and "were never bought, sold, or spoken of in commerce as cotton laces." However, Lacombe, J., charging the jury, said:

> You will, of course, understand that *the plaintiff has to cover with his trade evidence both description of words—the words under which they are actually bought and sold and also the word or words under which he claims that they are not known.* To illustrate: "Linen" in the dictionary is described as a "thread or cloth made of flax or hemp." Now, from linen cloth are made hemstitch pocket handkerchiefs. Testimony merely to the effect that these handkerchiefs were never bought and sold in the trade by any other name than "hemstitch pocket handkerchiefs," and that they were never known in the trade as "linen," would not take these goods out of the class of linens, unless it was also shown that the word "linen" had been distorted from its actual meaning, and was by the trade used solely in a restricted sense, as covering only goods other than handkerchiefs. So, in the case before us, in order to take this class of goods, which * * * is within the dictionary meaning of the words "cotton laces," out of that class, the plaintiff must satisfy you by a fair preponderance of proof that at the time this act was passed * * * and prior thereto the words "cotton laces" had in the trade and commerce of this country * * * a peculiar or technical trade meaning and that such technical trade meaning excluded these articles.

In *Carson* v. *Nixon*, 90 Fed., 409 (C. C. A.), it was held that embroidered handkerchiefs which were hemstitched, scalloped, or initialed were not excluded from classification as embroidered handkerchiefs simply by proof that they were not known in the trade as "embroidered handkerchiefs," in the absence of proof that the term "embroidered handkerchiefs" was a recognized commercial designation which did not include the special kinds of embroidered handkerchiefs in question. The court adopted on this point the opinion of the Board of General Appraisers, as follows (p. 412):

> The term "embroidered handkerchiefs" (par. 276) is descriptive and not a commercial or trade designation. It is therefore immaterial whether the handkerchiefs in question are or are not known commercially as "embroidered and hemstitched handkerchiefs," or "embroidered and scalloped handkerchiefs."

To the same effect is *Field* v. *U. S.*, 90 Fed., 412 (C. C. A.), decided by the same court, in which it was held that the evidence made it clear that the word "embroideries" as applied to handkerchiefs had no special significance as a trade name, and must therefore have been used by Congress in its ordinary descriptive sense.

The proper method of showing that an article is excluded by commercial usage from classification under a given phrase of the tariff act is shown in the case of *Erhardt* v. *Ballin*, 55 Fed., 968 (C. C. A.),

in which, the issue being whether certain mufflers were to be classified as "hemmed handkerchiefs" according to the commercial understanding of that term prevailing at the time of the passage of the tariff act, "the plaintiffs gave testimony to show that they were not, but that they were always bought and sold as 'mufflers,' and that they were used for neckwear only, and that in commercial signification the term 'handkerchief' did not include articles other than those designed for use in wiping the face or hands."

Applying the foregoing authorities to the case at bar, it follows that as the importer limited his proof to testimony that these particular fleeces were known as Mocha hair and were not known as wool, and made no effort whatever to show that either the term "wools" or the term "wools of the third class" or the term "wools of like character" to Donskoi and other wools of the third class had, at the time the act was passed, a definite commercial meaning which excluded the particular fleeces in question, the proof on the question of commercial designation is therefore wholly insufficient, even if this were a case where the rule of commercial designation could apply.

III.

The importer having made no effort to show either that the fleeces in question were not "of like character" to Donskoi or other enumerated wools of the third class, or that they did not conform to the standard samples of wool of the third class deposited in the custom-house,

the presumption must now prevail that the importation was of like character to the enumerated wools of the third class and was correctly classified by the collector as wool of the third class in conformity to the standard samples.

It is well settled that the burden is upon the importer of overcoming by affirmative proof the presumption that the collector's decision was correct.

Arthur v. *Unkart*, 96 U. S., 118.
Erhardt v. *Schroeder*, 155 U. S., 124.
Pickhardt v. *United States*, 67 Fed., 323 (C. C. A.).
United States v. *Rosenwald*, 67 Fed., 323 (C. C. A.).
United States v. *Schering*, 123 Fed., 65 (C. C. A.).
Nereshe~~imer~~imer v. *United States*, 131 Fed., 977.

In *United States* v. *Rosenwald* (67 Fed., 323, 328 (C. C. A.)), Wallace, circuit judge, delivering the opinion, said:

~~*Robertson v. Downing*, 127 U. S., 607.~~
~~*United States v. Healy*, 160 U. S., 136.~~
~~*United States v. Fath*, 204 U. S., 143.~~

Whenever it is alleged by the importer that the collector has exacted a duty based upon an improper classification of merchandise, the burden of proof is upon him to prove the allegation. *Where the classification of merchandise depends upon the existence of specified characteristics descriptive of its qualities, it is to be presumed, in favor of a correct classi-*

fication, that those characteristics were found by the officers of the customs.

This rule was quoted and applied in *United States* v. *Schering* (123 Fed., 65, 66 (C. C. A.)), involving the question whether chloral hydrate had been properly assessed by the collector as "medicinal preparations containing alcohol," in which the court said:

> Although it does not specifically appear whether alcohol was used in the preparation of the importation in question, the fact that it was so used must be assumed. In the absence of evidence to the contrary, the presumption of the correctness of the action of the collector is to prevail.

Hence, under the foregoing authorities, as the proper classification of these fleeces depended upon their likeness to the enumerated wools of the third class, as determined by the standard samples, in the absence of countervailing proof, it must now be presumed, in favor of a correct classification, that such likeness was found by the customs officers, and the presumption of the correctness of the action of the collector will prevail.

IV.

The testimony offered by the importer in reference to the general character of these fleeces and their commercial use is insufficient to overthrow the presumption in favor of a correct classification.

1. As the test of classification under the statute is likeness of character to Donskoi and other enumerated

wools of the third class, to be determined by the standard samples of wool of the third class deposited in the custom-house, the importer's testimony as to the qualities of this fleece and its commercial use, which is entirely of an abstract and general character and not directed either to the point of its likeness to Donskoi and other enumerated wools or of conformity to the standard samples, is in any event immaterial.

In *Merritt* v. *Welsh*, 104 U. S., 694, it was held that as under the act of 1875 the dutiable quality of sugars was graded by their color, according to the Dutch standard (which was required to be furnished to the collectors of the port by the Secretary of the Treasury), color standard was thereby made the sole test of classification, and it was immaterial that a process of manufacture had been used so as to degrade their color according to the chemical standard.

2. It is well settled that where a wool or hair is of a species coming within a particular class of the wool schedule its especial quality and commercial use is immaterial and will not take it out of such class.

Cooper v. *Dobson*, 157 U. S., 148.

In *Cooper* v. *Dobson* (157 U. S., 148) it was held that common goat hair which could not be used for combing purposes was properly assessed under the paragraph of the wool schedule in act of 1883 relating to wool and hair of the second class

(which differed from the corresponding paragraph of the act of 1897 mainly in having the heading "combing wool") and was not entitled to free entry under the paragraph relating to the hair of horses and other animals. The court held, Mr. Justice Shiras delivering the opinion, that the paragraph of the wool schedule contained no restriction that the hair referred to should be fit for combing, but that all hair of the goat and other like animals was subject to duty thereunder "for whatever uses or purposes it is or may be adapted."

Later, it was held by the Board of General Appraisers in Treas. Dec. No. 26606, July 20, 1905, that fleeces imported from New Zealand which were from Leicester sheep of pure English blood were properly classified as class 2 Leicester wool, under the act of 1897, although some of the fleeces where shown to be of inferior quality.

3. The claim that these fleeces are of such low value that the wool is not worth the duty, is immaterial, since, in the first place, its competition is equally or more disastrous to the American wool which was intended to be protected, and, secondly, if so valueless, the simple and natural procedure for the importers is to remove the fleece before its importation and thereby bring in the skin free under paragraph 664, without paying either freight or duty on the wool.

4. *There was, furthermore, material evidence tending to show that the fleece in question in fact has the*

qualities and is adapted to the uses of a low-grade third-class wool, and hence, under the settled rule of practice, the concurrent finding of the Board of General Appraisers, the Circuit Court, and the Circuit Court of Appeals that it is a wool of this class, is now conclusive.

While there is considerable evidence in behalf of the importer tending to show that the fleece on these sheepskins does not have the characteristics usually found in wool and is not ordinarily used for the purposes for which wool is used or adapted thereto, there is, on the other hand, material evidence in behalf of the Government that it does possess these qualities and is adapted, to a limited extent, to the uses of a low-grade wool.

Mr. Robert N. Kitching, who has been the examiner of wool fibers at the port of New York for about fifteen years and is practically familiar with all kinds of sheepskins imported and has frequently examined and passed upon Mocha sheepskins, and who was a witness for the importer (R., 25), testified with reference to the skin, Exhibit 1, which was a sample of the importations in question, as follows:

> Question. Referring to Exhibit 1 before you, how would you return that article for classification?
>
> Answer. I would return such as that as wool, sir.
>
> Question. Mocha sheepskin with the wool on?
>
> Answer. Yes, sir. (R., 26.)

He also testified that it could be carded, but that there would not be much left after carding it, and while he stated that it was not commercially suitable for carding, added "they can mix it with wool and card it." (R., 26.)

Ammon P. Souls, a dealer in hair and wool, a witness for the importer, who testified that he had handled car after car of this merchandise and sold it to stuffing manufacturers, also stated that it had been tried in mills to spin, but very little, and might be used sometimes by carpet manufacturers in a small way; also that while it could not be used or spun alone, it *could be carded and, as he thought, could be made into yarn.* (R., 16.)

Lazarus Simon, a wool dealer, a witness for the importer, after testifying that the substance on this skin was "hair," incidentally contradicted himself and referred to it as "wool," stating in reference to one lot that he had bought that he "took the *wool* off and sold it." (R., 23.)

George B. Ritchie, a wool and hair importer, and also a witness for the importer, being asked for what commercial purpose a growth like that on Exhibit 1 was suitable, stated, among other things, that "if it runs pretty white it is *sometimes used in these low carpet yarns*, where they put in such stuff as jute bagging is made of and some hair like this on Exhibit 1. The yarn itself sells for six and a half to seven cents a pound." (R., p. 37.)

It thus appears from the importer's own wit-

nesses that while this wool is of a low grade, largely mixed with hair, it is, nevertheless, in the opinion of the wool examiner, a wool of the third class; it can be carded; it is sometimes used, as shown by two witnesses, as a low-grade carpet yarn (this being the distinctive use of third-class wool); and it is admittedly the coat of a species of sheep and imported and sold in this country.

There is therefore certainly material evidence tending to show that it is in fact a low-grade wool of the third class, and it was therefore, independently of any other consideration, properly classified by the collector upon its qualities and uses alone, if such considerations were material.

Furthermore, as above seen, the principle upon which wools are classified under the statute is that of blood and breed.

It had been previously held by the Board of General Appraisers, in 1890, in Treas. Dec. No. 21737, that a cheap grade of mixed hair and wool, the product of a Mocha sheep of Arabian origin, used as a carpet-filling wool for making carpet yarns, was properly classified as wool of the third class, this decision, as stated in the present decision of the Board of General Appraisers, having been followed in an unpublished decision in 1900, under protest 41888–F, which was affirmed upon appeal, without opinion, by the United States Circuit Court for the southern district of New York, in 1904, in the case of *Abe Stein Company* v. *United States* (R., 28).

The importer concedes that this former decision, relating to the fleece of a Mocha sheep of the same general race or blood, is correct (R., 34).

In the present case it was held by the Board of General Appraisers that the question was the same as that involved in the former case, and that the evidence in the former case "that the article found on this class of skins, whether called hair or wool, could be carded," was "substantially confirmed by the testimony of Examiner Kitching" in the present case, and therefore, following the rule in the former cases and upon the authority of *Lyon* v. *Marine* (55 Fed., 964), the decision of the collector was affirmed (R., 28).

While it is true that this is a general finding, yet, under the doctrine of *Brainerd* v. *Buck* (184 U. S., 99, 105), it operated as a finding in favor of the Government upon every material fact, including the fact that the merchandise in question is wool of the third class.

While it is true that additional testimony was introduced by the importer in the Circuit Court for the purpose of differentiating the qualities of the fleece of the species Mocha sheep in the former case, which came from Jeddah, Arabia, from the white-head Mocha sheep involved in the present case, which came from Hodeida, Arabia, it is submitted that the weight attaching to the decision of the Board of General Appraisers is not entirely destroyed by the new evidence thus intro-

duced, and that when, after the consideration of such new evidence, both the Circuit Court and the Circuit Court of Appeals have concurred in their finding of fact that the merchandise in question is wool of the third class, this conclusion, in view of the material evidence by which it is supported, is now conclusive.

In the opinion rendered by the Circuit Court it was said:

> The sole question presented is whether these skins have wool on or hair only. The Board of General Appraisers reached the conclusion that a certain percentage of the covering was wool, and therefore that the skins were sheepskins with the wool on within the meaning of the tariff act. Inasmuch as there was sufficient evidence to support the finding of the Board as to the fact of wool upon the skins, and as the court, upon examination of the sample, is unable to say that this finding is incorrect, and as the definitions in the encyclopedias and dictionaries support the claim that such a product is wool, although of a low order, the decision of the Board of General Appraisers is affirmed. (R., 39.)

In the Circuit Court of Appeals the judgment below was affirmed on the opinion of the Circuit Court. (R., 46.)

The case therefore calls for the application of "the settled doctrine of this court * * * that the concurring decision of two courts on a question

of fact will be followed unless shown to be clearly erroneous."

Dravo v. *Fabel*, 132 U. S., 487.
Compania La Flecha v. *Brauer*, 168 U. S., 104.
Stuart v. *Hayden*, 169 U. S., 1.
Baker v. *Cummings*, 169 U. S., 189, 198.
Wupperman v. *The Carib Prince*, 170 U. S., 655.
Workman v. *New York City*, 179 U. S., 552, 555.
Brainerd v. *Buck*, 184 U. S., 99.
Beyer v. *Le Fevre*, 186 U. S., 114.
Shappirio v. *Goldberg*, 192 U. S., 232.

In *Beyer* v. *Le Fevre* (186 U. S., 114), Mr. Justice Brewer, delivering the opinion of the court, said that—

> It is well settled that when the trial and the appellate courts agree as to the facts established on the trial, this court will accept their conclusion and not attempt to weigh conflicting testimony. *Stuart* v. *Hayden* (169 U. S., 1, 14) and authorities cited in the opinion. And this rule of concurrence with the conclusions of the trial and appellate courts is given more weight when in the first instance the facts are found by a master or a jury. *Furrer* v. *Ferris* (145 U. S., 132) and cases cited in the opinion. These propositions we have often affirmed.

So, in the present case, this rule of concurrence with the conclusion of the trial and appellate courts

is given more weight by the fact that in the first instance the facts were likewise found by the Board of General Appraisers.

V.

For the foregoing reasons it is submitted that there is no error in the record and that the judgment of the Circuit Court of Appeals should be in all things affirmed.

Respectfully,

EDWARD T. SANFORD,
Assistant Attorney-General.

Supreme Court of the United States.

No. 261.—October Term, 1906.

The Goat and Sheepskin Import Company, Petitioner, *vs.* The United States.	On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 13, 1907.]

This case comes here by virtue of a writ of certiorari issued from this court to the United States Circuit Court of Appeals for the Second Circuit, for the purpose of reviewing the action of the Courts and of the customs authorities in relation to an assessment of duty on certain importations made by the petitioner, appellant, at the port of New York.

The merchandise on which duty was assessed was a growth upon certain skins of the Mocha sheep, imported from Hodeida, Arabia, which growth was classified by the collector as wool on the skin of the third class and assessed for duty at three cents per pound, under the provisions of paragraph 360 of the tariff act of July 24, 1897, (30 Stat., pages 151, 183.) The importer duly protested against the classification and insisted that the merchandise was entitled to entry free of duty under paragraph 571, (30 Stat., *supra*, page 198,) or under paragraph 664 of such act. (Page 201.) Paragraphs 351, 358, 360, under which the Government claims duty, and paragraphs 571 and 664, under which the importer claims free entry, are set forth in the margin.*

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* (Paragraphs from Tariff Act of 1897, under which the Government claims. 30 Stat. 151, 183.)

351. Class three, that is to say, Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camels' hair and all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Syria and elsewhere, excepting improved wools hereinafter provided for.

358. On wools of the third class and on camels' hair of the third class, the value whereof shall be twelve cents or less per pound, the duty shall be four cents per pound.

360. The duty on wools on the skin shall be one cent less per pound than is imposed in this schedule on other wools of the same class and condition, the quantity and value to be ascertained under such rules as the Secretary of the Treasury may prescribe.

Petitioner claims under following paragraphs:

571. Hair of horse, cattle and other animals, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for in this act, and human hair, raw, uncleaned and not drawn.

664. Skins of all kinds, raw, (except sheepskins with the wool on,) and hides not specially provided for in this act.

The collector having returned the merchandise in question as wool of the 3d class, under paragraph 360, the importer appealed to the Board of General Appraisers, where the ruling of the collector was sustained, and the importer then appealed to the Circuit Court and then to the Circuit Court of Appeals, each of which courts sustained the ruling of the Board of General Appraisers and the collector.

Before the Board of General Appraisers the importer produced six witnesses, who testified as to the character, use and commercial designation of the merchandise. On the appeal to the Circuit Court a referee was there appointed, and the importer offered further evidence to sustain his claim that the merchandise was entitled to free entry.

No testimony was offered by the Government. It is not claimed by the Government that the merchandise in question comes under paragraph 351 as wool of the 3d class, (except as it may be wool of like character,) as it is not Donskoi, native South American, Cordova, Valpariso, native Smyrna or Russian camel's hair, but it is asserted that the growth on the skins was wool on the skin under paragraph 360, or was a wool of like character as that above enumerated in paragraph 351.

The evidence shows that the hair or wool, (whichever it is called,) grows on the Mocha white sheep, imported from Hodeida, Arabia. The growth to be found on this breed of sheep is not bought or sold in this country as wool, but as hair. It would not be accepted as a delivery of wool of any grade by those dealing in that article. Although there might have been a very small proportion of what might possibly be termed very inferior wool on these skins, (not more than ten per centum in any case, and frequently less,) yet there was no substantial use of any portion of the growth on the skins for purposes for which wool is generally used. To some extent, but very little, it had been tried in mills to spin, and it might be used sometimes by carpet manufacturers in a small way, and efforts had been made to use it, mixed with wool, in spinning, but it was not practically successful, nor was it practicable to use it for other purposes for which wool is used. The chief, or predominant, and almost sole use of the substance is as hair for stuffing, and for the saddlery trade, and by bed manufacturers for stuffing purposes. It is bought and sold all over the country as Mocha hair. The skin upon which the substance grows is the thing that is valuable. A large part of the skins imported into this country is used in the manufacture of glove leather. One witness testified that his firm so used from seventy-five to ninety per cent of the skins imported, and the growth thereon was bought and sold as Mocha hair. It costs more to remove the growth from the skin than it sells for after its removal. It cannot be used for spinning purposes, because it would not hold together. It might be carded, but there would not be much left after

carding. The price of the skins on which this growth is found is not influenced by the quantity of the growth on them. The more of a growth there is, the less the skin will bring, or, as is said, the more hair, the poorer the skin. The skins are sold by the importers to tanners of gloves and shoe leather, just as they arrive. After the growth is washed and removed from the skin it may be sold for from three to five cents per pound, which is less than the cost of removing it. In buying the skins no notice is taken of the growth, the only consideration being the value of the pelt, and the pelts are worth no more with long hair on than short hair. The growth has never been accepted or sold as wool, but, on the contrary, prior to July 24, 1897, when the tariff act was passed, it was uniformly regarded and bought and sold in the United States as hair. "Mocha hair" was the trade nomenclature prior to 1899, and as such the trade name was definite and uniform throughout the United States, and dealers in it never knew it to be called anything else than Mocha hair. It has not the appearance of wool, does not feel like wool and has none of the qualities of wool. It is bought from tanners after it has been taken from the skin by them, and it is thus sold and bought as Mocha hair, and the skins are used for leather by the tanners.

One of the witnesses called on behalf of the importers was an examiner of wool fibres and skins at the port of New York, which position he had held for about fifteen years. He said that when he first went into the Government employ such skins as those in question were returned free, the hair as well as the skin, but that practice has since been changed. The witness further said, that if the growth in question were found on a goat he would return it as hair of a goat, and entitled to free entry; that wool could be run down, or deteriorate, to such a condition as the growth in question, but that it was, in fact, mostly "what they call dead hair or kemp;" that although it could possibly be carded, it was not commercially suitable, and there would not be much left after they got through carding it. On cross examination the witness said that he would return the article in question as Mocha sheepskin with the wool on. On such a skin as the one in question the witness said there was a substance which he would call wool, which was about ten per cent only of the growth; that he examines such skins as the ones in question and throws out those he considers dutiable when there is enough wool to call it dutiable, and lets the skins go not dutiable when you could not make anything out of the growth in any way, although some use might possibly be made of it.

The cross examination of other witnesses was to the effect that this growth had been tried in mills for the purpose of spinning, but very little, being used with other stock to make into yarn, but it has not been successfully used for that purpose; it might be used sometimes by carpet manufac-

turers in a small way, and while it could not be used or spun alone, it might be carded. It was also said on cross examination of one of the witnesses that if such growth ran pretty white it is sometimes used in those low grade carpet yarns where they put in such stuff as jute packing is made of and some hair like the growth in question. The evidence is, however, overwhelming and the witnesses substantially unanimous that this substance is not known as wool, and is neither bought nor sold as such, and is commercially known as Mocha hair and is not used as wool.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The evidence in this case, taken before the board of appraisers and also before the Circuit Court, is uncontradicted. It shows that the substance in question is not wool, has none of its characteristics and is not put to any of its uses and does not appear like wool. On the contrary, it is composed mostly of dead hair or kemp and cannot be remuneratively carded, nor is it commercially suited for carding, nor for spinning. Its commercial designation is Mocha hair, and it is not known or regarded or recognized as wool in any of the markets of the country.

It is not denied that the commercial designation of an article, which designation was known at the time of the passage of a tariff act, is the name by which the article should be classified for the payment of duty, and, as is stated, "without regard to their scientific designation and material of which they may be made or the use to which they may be applied." (*Two Hundred Chests of Tea*, 9 Wheat. 430, 438; *Arthur* v. *Morrison*, 96 U. S. 108; *American Net and Twine Co.* v. *Worthington*, 141 Id. 468; *Hedden* v. *Richard*, 149 Id. 346, 348.) As was said by Mr. Justice Story in *Two Hundred Chests of Tea*, *supra*, Congress did not "suppose our merchants to be naturalists or geologists or botanists. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic." And in *Hedden* v. *Richard*, *supra*, it was said: "The language of commerce . . . must be construed, . . . particularly when employed in the denomination of articles, according to the commercial understanding of the terms used." The commercial designation should prevail, unless Congress has clearly manifested a contrary intention. (*Cadwalader* v. *Zeh*, 151 U. S. 171, 176.)

We are of opinion that the use of the word "wool" in the tariff act, excluded a substance which, while it was a growth upon a sheepskin, was nevertheless, commercially known, designated and dealt in as Mocha hair, having none of the characteristics of wool, and which would not be accepted by dealers therein as a good delivery of wool.

In this case the evidence is uncontradicted that the growth on these skins was commercially known as Mocha hair, and that it was not used in the way wool is used, or as a substitutute for wool. It ought not, simply for the reason that the skin upon which it grows is the skin of a sheep, to be classified as wool, under paragraph 360 of the tariff act, and thereby be subjected to a duty as high as the value of the substance itself.

Although it has been so classified, and that classification has been affirmed all through, yet the question is not presented to this court as if it were a question of fact decided upon contradictory evidence, and concluding this court for that reason. There is, in truth, no contradictory evidence in the case. It is one, where in our opinion, the courts below have given undue weight to the evidence elicited on cross examination of witnesses called on the part of the importer, which showed that there possibly was, in some cases, a very little inferior wool found on these skins, while the courts ignored the other facts, as testified to by the same witnesses and already mentioned, which showed beyond the possibility of successful contradiction that the substance was erroneously classified as wool.

Upon the facts, the substance ought not to have been so classified. The growth being still on the skin should have been regarded as part of such skin, and classified under paragraph 664, in the free list, and not as a sheepskin with the wool on.

We do not agree that the word "wool" in this act is used in a generic sense so far as this particular point is concerned. The word does not necessarily include all growth upon the coat of a sheep, even though the substance is like that in question here.

Counsel for the Government cites from the Encyclopædia Britannica, where, in speaking of the difficulty in determining the dividing line between hair and wool, it is said: "At what point indeed it can be said that an animal fiber ceases to be hair and becomes wool it is impossible to determine, because in every characteristic the one class by imperceptible gradations merges into the other, so that a continuous chain can be formed from the finest and softest merino to the rigid bristles of the wild boar."

It may be difficult in some cases to define the line between "wool" and "hair" as a growth upon skins, but we do not regard that difficulty as an argument for the construction contended for by counsel for the Government. That argument leads to the classification of a substance like that in question, as wool, when in fact it bears no resemblance to it, is not used as wool, and has none of its characteristics, and is known commercially as Mocha hair and is so bought and sold over the whole country. The case is one of degree, and because in some few cases the points may closely approach each other and there may be in such cases some difficulty in telling wool from hair, yet that fact furnishes no reason for refusing to

adopt the general test which in most cases is easily applied, fitness, identity of use, commercial designation. To adopt the claim of counsel eliminates all inquiry as to whether an article is wool or hair, and leaves simply the question whether it is to be found on what may be called the wool bearing animals or on the alpaca or other like hair coated animals. Some sheep are wool bearing animals, therefore the hair on the skin of the Mocha sheep is wool and must be classified as such. We do not agree with this claim. If an article does not, to a dealer, look like wool, cannot be used as wool, is not commercially known as wool, but, on the contrary, is bought and sold throughout the country as Mocha hair and is so designated commercially by those dealing in it, it ought not to be classified as wool or made to pay duty as such, simply because it grows on a sheep.

We have looked over the various authorities cited by counsel for the Government, but we see nothing in any of them tending to the conclusion that upon the facts in this case the growth on the skin of the Mocha sheep was properly classified as wool.

Taking all the evidence in this case, uncontradicted as it is, we feel compelled to the conclusion that the classification in this case, adopted by the courts below and by the Appraisers and Collector was wrong, and that the merchandise in question was entitled to free entry.

The judgments of the courts below are reversed and the case remanded to the Circuit Court with instructions to take such further proceedings as may be necessary, not inconsistent with this opinion.

Reversed.

Mr. Justice MOODY took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.